

1	3
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA	INDEX
STATE OF TEXAS)	PAGE
)	Appearances..... 2
)	
VS.) NO. 12-CV-128	ROBERT DUNCAN
) (DST, RMC, RLW)	Examination by Ms. Maranzano 6
)	Examination by Mr. Brazil. 242
ERIC H. HOLDER, JR.,)	
In his official)	Signature and Changes..... 254
Capacity as Attorney)	Reporter's Certificate..... 256
General of the United)	
States, ET AL)	

ORAL DEPOSITION OF ROBERT DUNCAN	

ANSWERS AND DEPOSITION OF ROBERT DUNCAN, a witness called by the United States taken before Janalyn Reeves, Certified Shorthand Reporter for the State of Texas, on the 7th day of June, 2012, between the hours of 9:30 a.m. and 4:25 p.m., in the offices the US Attorney, 816 Congress Avenue, Suite 1000, Austin, Texas, pursuant to the agreement of counsel for the respective parties as hereinafter set forth.	
2	4
APPEARANCES	EXHIBITS
FOR THE PLAINTIFF, STATE OF TEXAS:	NO. DESCRIPTION PAGE
OFFICE OF THE ATTORNEY GENERAL:	520 Notice of Deposition 35
By: MR. PATRICK SWEETEN	521 House Bill 48
- and -	522 Interim Report 58
MR. JAY DYER	523 Online History 82
209 West 14th Street	524 HB 218 Record 126
Austin, Texas 78701	525 Senate Rules 137
PH: (512) 936-6432	526 Letter 149
	527 Letter 149
FOR THE DEFENDANT:	528 Senate Journal 163
DEPARTMENT OF JUSTICE	529 Email 170
By: MS. JENNIFER MARANZANO	530 Senate Bill 14 172
- and -	531 Letter 215
MR. VICTOR WILLIAMSON	532 Letter 215
950 Pennsylvania Avenue, NW	533 Senate Rules 219
Room 7161 NWB	534 Indiana Voter ID Law 221
Washington, DC 20530	535 SB 14 Hearing Transcript 223
PH: (202) 305-0185	536 Senate Journal 228
FOR THE INTEVENORS:	PREVIOUSLY MARKED EXHIBITS
BRAZIL & DUNN, LLP	3 Letter 98
By: MR. SCOTT BRAZIL	28 HB 218 79
4201 Cypress Creek Parkway	29 SB 362 105
Suite 530	
Houston, Texas 77068	
Ph: (281) 580-6310	

<p style="text-align: center;">5</p> <p>1 MS. MARANZANO: Good afternoon, Senator 2 Duncan. My name is Jennifer Maranzano. I'm 3 representing the defendant, Attorney General Eric 4 Holder, in this matter. Can you please -- 5 MR. SWEETEN: I'm sorry. Can we do 6 introductions? I would like to make sure the record is 7 clear on who is here for whom. 8 MS. MARANZANO: Yes. Why don't we go around 9 the room and everybody state their name and who they are 10 representing. 11 MR. WILLIAMSON: Victor Williamson, 12 Department of Justice. 13 MR. BRAZIL: Scott Brazil for the Kennie 14 Intervenor's. 15 MS. MARANZANO: Jennifer Maranzano with 16 defendant, Attorney General Eric Holder. 17 MR. SWEETEN: I'm Patrick Sweeten with the 18 State of Texas and on behalf of the State and on behalf 19 of the witness, Senator Robert Duncan. And attorney Jay 20 Dire who will be joining us very shortly. 21 MS. MARANZANO: Thank you. 22 SENATOR ROBERT DUNCAN, 23 having being first duly sworn, testified as follows: 24 25</p>	<p style="text-align: center;">7</p> <p>1 A. 90s, 1995, '94. 2 Q. And the cases on legislative intent, can you tell 3 me about those? 4 A. That was a case on a workers' comp bill I 5 believe, back in 1994. And I was deposed on what was 6 the -- I can't remember the specific issue, but it had 7 something to do with workers' comp. 8 Q. Were you deposed in your capacity as a senator? 9 A. No, I wasn't a senator at this time. 10 Q. Were you deposed as a member of the House of 11 Representatives? 12 A. Correct. 13 Q. And the other cases you were deposed in? 14 A. They were private cases, as I was deposed as a 15 person with knowledge, specialized knowledge in a 16 certain area or field. 17 Q. Okay. And what field or area? 18 A. That was workers' compensation. 19 Q. Okay. And the case in which you testified -- in 20 which you were deposed that dealt with legislative 21 intent, can you tell me what you mean by that 22 legislative intent? 23 A. Well, they were -- the lawyers on one side 24 were -- there had been an amendment to a bill that I had 25 handled. And they were trying to -- and I don't even</p>
<p style="text-align: center;">6</p> <p>1 EXAMINATION 2 BY MS. MARANZANO: 3 Q. Senator, can you please state your name for the 4 record? 5 A. Robert Duncan. 6 Q. Have you been deposed before? 7 A. Yes. 8 Q. And what was the -- what case was that? 9 A. I'm an attorney, so I appeared as an expert on 10 things before. I was also deposed in the redistricting 11 case by Senator Davis's attorney that was -- occurred 12 here in 2011 I believe, or '12. 13 Q. How many times have you been deposed? 14 A. I don't know. I've had depositions on 15 legislative intent back when I was in the House. So I 16 would say four or five times, but I can't remember 17 specifically. 18 Q. And one was the redistricting case in 2011? 19 A. Correct. 20 Q. And one was a case where you were an expert, did 21 you say? 22 A. Well, more or less, yes, on workers' 23 compensation. It's an area that I had some expertise a 24 long time ago. Not anymore. 25 Q. And when was that?</p>	<p style="text-align: center;">8</p> <p>1 remember the bill. And it was workers' comp -- may have 2 been something else. I can't remember. But it was -- 3 they were trying to understand what the nature of the 4 legislation and what was in it. That's all I really 5 remember about it. 6 Q. Do you remember the nature of that case? 7 A. No. 8 Q. And the other cases, the other cases for which 9 you were deposed, other than this case that we're 10 talking about right now where you testified about the 11 legislative intent of the workers' compensation bill and 12 the redistricting case, you said you were deposed in 13 your capacity as an individual, not as a legislator; is 14 that correct? 15 A. In the -- I don't understand the question. I'm 16 sorry. 17 Q. So there were two times, I think, that we've 18 talked about where you were deposed in your capacity as 19 a legislator; is that correct? 20 A. Twice, yes. 21 Q. And the other times you were deposed, was that in 22 your capacity as an individual? 23 A. Correct. 24 Q. Okay. Well, I'm going to tell you a little bit 25 about how this is going to go today. It sounds like you</p>

<p style="text-align: center;">13</p> <p>1 A. Not about this -- about the case or the</p> <p>2 deposition.</p> <p>3 Q. Have you reviewed any transcripts from anybody</p> <p>4 who's been deposed in this case?</p> <p>5 A. No.</p> <p>6 Q. Did you bring any notes or documents with you</p> <p>7 today?</p> <p>8 A. No.</p> <p>9 Q. Is it your understanding that you, as a state</p> <p>10 legislator, may invoke legislative privilege?</p> <p>11 A. Yes.</p> <p>12 Q. Will you be invoking the legislative privilege</p> <p>13 over your deposition testimony today?</p> <p>14 A. Yes.</p> <p>15 MS. MARANZANO: I would like to note, for</p> <p>16 the record, that we've received a court order on June</p> <p>17 5th about what topics are covered by the legislative</p> <p>18 privilege and what topics are not covered by the</p> <p>19 legislative privilege. I'm going to ask questions in</p> <p>20 compliance with that court order. Obviously your</p> <p>21 attorney can object to questions that he believes invade</p> <p>22 the legislative privilege and give you instructions</p> <p>23 accordingly. But I want to say, for the record, that</p> <p>24 we're reserving our right to appeal that decision at the</p> <p>25 appropriate juncture.</p>	<p style="text-align: center;">15</p> <p>1 A. I don't have a legal specialization. I primarily</p> <p>2 am involved in litigation, personal injury and</p> <p>3 commercial.</p> <p>4 Q. How long have you served in the Senate?</p> <p>5 A. I was elected in the special election and sworn</p> <p>6 in in December of 1996.</p> <p>7 Q. And you've served continuously since then?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Have you held other elected offices?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. And what are those?</p> <p>12 A. I was a member of the Texas House of</p> <p>13 Representatives from 1993 until 1996 when I resigned to</p> <p>14 run for the Senate.</p> <p>15 Q. What made you decide to seek public office?</p> <p>16 A. In essence, public service.</p> <p>17 Q. Can you tell me about the population of the</p> <p>18 district that you currently serve pre-redistricting?</p> <p>19 A. Well, be more specific.</p> <p>20 Q. Do you have any sense of the population</p> <p>21 demographics?</p> <p>22 A. I would be speculating on them. I know that the</p> <p>23 region of the state I represent has Anglo and Hispanic</p> <p>24 influence and Hispanic influence is growing.</p> <p>25 Q. Any sense of what percentage, approximately?</p>
<p style="text-align: center;">14</p> <p>1 BY MS. MARANZANO:</p> <p>2 Q. Can you describe your educational background for</p> <p>3 me?</p> <p>4 A. Yes. I completed a BS degree in 1976 in</p> <p>5 agricultural economics, a JD degree from the Texas Tech</p> <p>6 University School of Law in 1981. And that's generally</p> <p>7 it.</p> <p>8 Q. Are you currently licensed to practice law?</p> <p>9 A. Yes.</p> <p>10 Q. And in what states are you admitted to the bar?</p> <p>11 A. Texas.</p> <p>12 Q. Any others?</p> <p>13 A. Just federal courts and Supreme Courts, 5th</p> <p>14 Circuit.</p> <p>15 Q. And your bar license is currently active?</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell me every legal job you've had since</p> <p>18 graduating from law school?</p> <p>19 A. Yes. I served as an associate in the law firm of</p> <p>20 Crenshaw, Dupree & Milam until 1984. And then I was a</p> <p>21 partner in that firm and have been a partner in that</p> <p>22 firm since then and continue today to be a partner in</p> <p>23 that firm.</p> <p>24 Q. And do you have a special area you work on in</p> <p>25 that firm?</p>	<p style="text-align: center;">16</p> <p>1 A. Well, I would be guessing so I don't want to</p> <p>2 speculate on that. I've seen the numbers and know the</p> <p>3 numbers. But from a general list, but I don't want to</p> <p>4 lay a number out without being specific. Those</p> <p>5 demographics exist and change periodically. But</p> <p>6 generally we have -- in rural West Texas we're Hispanic</p> <p>7 and Anglo primarily, with African-American as well.</p> <p>8 Q. Do you do any outreach in your district that's</p> <p>9 geared particularly at minority communities?</p> <p>10 A. I try to be available and outreach to all</p> <p>11 communities. And yes, I do. I work very well with</p> <p>12 Hispanic leaders and members of the Hispanic community,</p> <p>13 as well as the African-American community.</p> <p>14 Q. What do you mean by that, "you work well with</p> <p>15 leaders of the Hispanic community"?</p> <p>16 A. Well, I support their events and meet with them</p> <p>17 on a regular basis. They support me. I recently had a</p> <p>18 fundraiser. It was supported by and sponsored by</p> <p>19 Hispanic leaders in the Lubbock community. And so, you</p> <p>20 know, I try to -- my district is very broad and verse</p> <p>21 and I try to do the best I can to meet the needs of the</p> <p>22 members of my constituents I represent.</p> <p>23 Q. Would you say that Hispanics are an important</p> <p>24 constituency in your district?</p> <p>25 A. They are.</p>

<p style="text-align: center;">17</p> <p>1 Q. Would you say African-Americans are an important</p> <p>2 constituency in your district?</p> <p>3 A. They are.</p> <p>4 Q. What committees do you serve on in the Texas</p> <p>5 Senate?</p> <p>6 A. I chair the State Affairs Committee. I serve on</p> <p>7 the Finance Committee, Higher Education Committee, on</p> <p>8 Jurisprudence -- Committee on Jurisprudence and, you</p> <p>9 know, various select committees that are appointed</p> <p>10 during the interim. I don't think I left anything out.</p> <p>11 Q. You what?</p> <p>12 A. I think I covered everything.</p> <p>13 Q. Okay. How long have you served on the State</p> <p>14 Affairs Committee?</p> <p>15 A. I was initially appointed to that committee in</p> <p>16 2003. And in 2000 -- excuse me, 2001 -- no, 2003. I'm</p> <p>17 sorry, 2003. And then I became chair in 2004 or '05,</p> <p>18 2004, I believe.</p> <p>19 Q. How did you become chair?</p> <p>20 A. The Lieutenant Governor appoints the chairman of</p> <p>21 various committees.</p> <p>22 Q. And who was the Lieutenant Governor at that time?</p> <p>23 A. Lieutenant Governor Dewhurst, David Dewhurst.</p> <p>24 Q. What were the -- did you say you were on a couple</p> <p>25 select committees?</p>	<p style="text-align: center;">19</p> <p>1 Q. Putting aside voter ID bills, how many election</p> <p>2 related bills have you sponsored?</p> <p>3 A. That's a good question. I don't know the answer</p> <p>4 I have, because as chairman of the committee we</p> <p>5 interface with the Secretary of State quite a bit and</p> <p>6 during the terms that I have served as chairman we've</p> <p>7 implemented HAVA, we've implemented -- last session we</p> <p>8 did the MOVE Act. So we've worked with the Secretary of</p> <p>9 State's office. And typically I will sponsor those</p> <p>10 bills, or a lot of times Leticia Van de Putte will do</p> <p>11 that. She handles a lot of legislation and she and I</p> <p>12 have worked together on those issues with regard to</p> <p>13 election bills.</p> <p>14 Q. Is Senator Van de Putte also on the State Affairs</p> <p>15 Committee?</p> <p>16 A. Yes.</p> <p>17 Q. And so am I understanding you correctly, it's a</p> <p>18 number of legislation bills you've sponsored?</p> <p>19 MR. SWEETEN: You can refer to matters of</p> <p>20 the public record when answering this.</p> <p>21 BY MS. MARANZANO:</p> <p>22 Q. We're just talking about ones that you've</p> <p>23 publicly sponsored?</p> <p>24 A. I can't give you an amount. That would be in the</p> <p>25 record. You can look that up.</p>
<p style="text-align: center;">18</p> <p>1 A. Right.</p> <p>2 Q. What were those?</p> <p>3 A. Well, I've been on several. But mostly involving</p> <p>4 school finance, public school finance.</p> <p>5 Q. Anything else?</p> <p>6 A. That's all. I think that's really, mainly it.</p> <p>7 Q. And what's the purpose of a select committee?</p> <p>8 A. Well, generally a select committee has members of</p> <p>9 both the House and the Senate to study an issue in the</p> <p>10 interim and often times they'll also have members of the</p> <p>11 general public, as school finance did.</p> <p>12 Q. Are they always held during interim sessions?</p> <p>13 A. Normally. I can't recall of one not. There's no</p> <p>14 requirement of that, but it would be unusual to have a</p> <p>15 select committee operating during a 140-day general</p> <p>16 session.</p> <p>17 Q. Other than the Committee of the Whole, is the</p> <p>18 State Affairs Committee the only Senate committee that</p> <p>19 considered voter ID bills?</p> <p>20 A. To my recollection, I believe that to be the</p> <p>21 case, as far as I remember.</p> <p>22 Q. If a Senator wishes to introduce a bill that's</p> <p>23 going to be heard by the State Affairs Committee, do</p> <p>24 they usually confer with you about that bill?</p> <p>25 A. No.</p>	<p style="text-align: center;">20</p> <p>1 Q. Right. But are you saying you can't give me an</p> <p>2 amount because it's more than a few?</p> <p>3 A. Well, that and I've carried a lot of bills over a</p> <p>4 lot of things in the 14 or 15 years. So I just can't</p> <p>5 tell you specifically what they are. I can tell you</p> <p>6 like I did, the general -- the bills that basically are</p> <p>7 mandated to be -- by Congress to be a part of the State</p> <p>8 systems, typically I'll handle those. But not always.</p> <p>9 It depends if there's another member who wants to do</p> <p>10 that, that's fine with me.</p> <p>11 Q. And how does that work, if a federal law passes</p> <p>12 that the State needs to implement, does the Secretary of</p> <p>13 State usually reach out to you? How do you end up</p> <p>14 proposing a law to implement HAVA or the MOVE Act, as</p> <p>15 you referenced?</p> <p>16 MR. SWEETEN: I'm going to object to the</p> <p>17 question to the extent it calls for him to reveal his</p> <p>18 mental impressions, his thoughts, his motivation about</p> <p>19 legislation or the furtherance of the legislative</p> <p>20 process. I'm going to instruct you not to answer to the</p> <p>21 extent that your answer would implement those things.</p> <p>22 You're free to refer to matters of the public record.</p> <p>23 Also I'm going object to the question as vague and</p> <p>24 compound.</p> <p>25 A. I'll follow his instruction.</p>

<p style="text-align: center;">21</p> <p>1 Q. (By Ms. Maranzano) Okay. There's nothing on the</p> <p>2 public record that you could tell me about how the State</p> <p>3 goes about implementing a federal election law that</p> <p>4 passes?</p> <p>5 A. Well, the public -- yeah, there is. If you look</p> <p>6 at the record of our committee. When a bill is passed,</p> <p>7 or introduced and then it goes to the hearing process.</p> <p>8 And so there's a recorded testimony, there is evidence</p> <p>9 that's put in the record and all of that is a part of</p> <p>10 the legislative record and that's where it is. It's</p> <p>11 pretty clear on how it goes about what the testimony is,</p> <p>12 Secretary of State will testify. Typically the expert</p> <p>13 in their office will testify as to the need for the</p> <p>14 bill. And that's how that works.</p> <p>15 Q. Okay. Are there primary areas of focus, of</p> <p>16 legislative focus that you work on?</p> <p>17 A. Not really. I've had pretty -- well, work in a</p> <p>18 lot of different areas.</p> <p>19 Q. Other than being the chair of the State Affairs</p> <p>20 Committee, do you have any leadership roles in the</p> <p>21 Senate?</p> <p>22 A. Today, that's it.</p> <p>23 Q. In the past have you had other leadership roles?</p> <p>24 A. I was chairman of the Jurisprudence and was</p> <p>25 president pro tem.</p>	<p style="text-align: center;">23</p> <p>1 Q. Do you have any experience related to election</p> <p>2 administration?</p> <p>3 A. No.</p> <p>4 Q. Have you ever served as a poll worker?</p> <p>5 A. No.</p> <p>6 Q. While you -- well, let me ask you this. Do you</p> <p>7 vote in person?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Have you ever witnessed any problems while you've</p> <p>10 been voting?</p> <p>11 A. No.</p> <p>12 Q. Have you ever seen anybody try to impersonate</p> <p>13 another voter, that you're aware of, while you've been</p> <p>14 voting?</p> <p>15 A. No.</p> <p>16 Q. Have you ever seen a non-citizen trying to vote</p> <p>17 while you've been voting, that you're aware of?</p> <p>18 A. I wouldn't be aware.</p> <p>19 Q. Have you ever challenged a voter's eligibility?</p> <p>20 A. No.</p> <p>21 Q. Are you familiar with a group called the American</p> <p>22 Legislative Exchange Council, or ALEC?</p> <p>23 A. I've heard of them.</p> <p>24 Q. Have you ever had any affiliation with them?</p> <p>25 A. No.</p>
<p style="text-align: center;">22</p> <p>1 Q. And when were you chair of the Jurisprudence</p> <p>2 Committee?</p> <p>3 A. 2003 and 2000 -- 2001, 2003, I think.</p> <p>4 Q. 2001 to 2003?</p> <p>5 A. I think it was two sessions.</p> <p>6 Q. Approximately. Okay. When were you president</p> <p>7 and pro tem?</p> <p>8 A. 2011. No, 2009. Sorry. Sorry.</p> <p>9 Q. What are the responsibilities of being president</p> <p>10 pro tem?</p> <p>11 A. Well, I think the main responsibility is the</p> <p>12 constitutional position. And should the Lieutenant</p> <p>13 Governor not be in the state or not be able to act,</p> <p>14 well, then, the pro tem immediately succeeds that</p> <p>15 position. If the Lieutenant Governor leaves office, the</p> <p>16 president pro tem then must call a special session to</p> <p>17 elect a presiding officer. That's primarily -- when the</p> <p>18 Lieutenant Governor and the governor are out of the</p> <p>19 state temporarily, then the president pro tem moves into</p> <p>20 the head of the government. So it's primarily what it's</p> <p>21 responsibilities include.</p> <p>22 Q. Do you have any experience related to election</p> <p>23 law?</p> <p>24 A. Other than serving on the State Affairs Committee</p> <p>25 no.</p>	<p style="text-align: center;">24</p> <p>1 Q. Have you ever gone to any of their meetings?</p> <p>2 A. No.</p> <p>3 Q. Have you ever received any documents or</p> <p>4 communications from them?</p> <p>5 A. Not that I know of. You know, I'm not a member</p> <p>6 so I don't get their documents. If they send something</p> <p>7 generally to everybody in the legislature, maybe so. I</p> <p>8 don't know. I don't recall seeing anything. It might</p> <p>9 not get to me.</p> <p>10 Q. Are you familiar with a group called the National</p> <p>11 Conference of State Legislators?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Do you have any affiliation with that group?</p> <p>14 A. With who?</p> <p>15 Q. National Conference of State Legislators.</p> <p>16 A. I think, like all legislators, we're probably</p> <p>17 members, the legislature is. But I don't have any</p> <p>18 particular, individual affiliation or office or anything</p> <p>19 like that. I don't go to the meetings other than, I</p> <p>20 think I've given a speech at one. And I think I got an</p> <p>21 award when I was in the House and I went to one as a</p> <p>22 result of that award.</p> <p>23 Q. Can you tell me when you gave the speech?</p> <p>24 A. I think it was in 2009, something like that 2008</p> <p>25 or '09.</p>

25

- 1 Q. Do you -- what was that about?
- 2 A. Retirement benefits.
- 3 Q. And what did you get an award for?
- 4 A. The National Republican Legislators Award,
- 5 something like that, when I was in the House.
- 6 Q. When was that?
- 7 A. '94 or '95, '95.
- 8 Q. And was it for anything in particular?
- 9 A. No.
- 10 Q. Just being a good legislator?
- 11 A. Not sure why I got it.
- 12 Q. Okay. Have you received materials from the
- 13 National Council of State Legislators?
- 14 A. I'm sure we have over the -- overtime.
- 15 Q. Do you know if any of them involved voter ID?
- 16 A. I don't know.
- 17 Q. Do you have any familiarity with a group called
- 18 Safe Texas?
- 19 A. No.
- 20 Q. Do you know who they are?
- 21 A. No.
- 22 Q. Do you have any familiarity with a group called
- 23 Secure and Fair Elections in Texas?
- 24 A. No.
- 25 Q. Are you familiar with someone by the name of

26

- 1 Melinda Frederick?
- 2 A. No.
- 3 Q. Are you familiar with someone by the name of Tony
- 4 Ann Dashiell, D-A-S-H-I-E-L-L?
- 5 A. No, ma'am.
- 6 Q. Do you know someone by the name of Russ Durstine?
- 7 A. Durstine, yes, I know Russ.
- 8 Q. Can you tell me who he is?
- 9 A. Russ is, I think the -- isn't he from San Angelo.
- 10 I think Russ is from San Angelo, which is in my
- 11 district. Or he's either that or he's active in the
- 12 Republican Party Chairman's Association. One of those
- 13 two. I think Russ is a constituent from San Angelo.
- 14 Q. Have you had any communications with Mr. -- say
- 15 his last name for me again?
- 16 A. Durstine.
- 17 Q. Durstine. About voter ID?
- 18 A. No. Probably not.
- 19 Q. Probably not?
- 20 A. Probably not.
- 21 Q. Are you familiar with someone by the name of
- 22 Barbara Larson?
- 23 A. No.
- 24 Q. How about -- are you familiar with someone by the
- 25 name Tom Mecler?

27

- 1 A. Yes.
- 2 Q. Who is Mr. Mecler?
- 3 A. He's a member of the SREC.
- 4 Q. And what is the SREC?
- 5 A. State Republican Executor's Committee.
- 6 Q. Have you had any --
- 7 A. And I think he's also a member of the -- he's on
- 8 the Texas Department of Criminal Justice Board as well,
- 9 I believe.
- 10 Q. I'm sorry. I didn't catch that?
- 11 A. The Texas Department of Criminal Justice Board, I
- 12 think he's on that, too.
- 13 Q. Have you had any communications with Mr. Mecler
- 14 about voter ID?
- 15 A. No. Not that I recall.
- 16 Q. Are you familiar where someone by the name of
- 17 Bill Nobel?
- 18 A. Bill who?
- 19 Q. Nobel.
- 20 A. No.
- 21 Q. Do you know someone by the name Eric Opiela?
- 22 A. No.
- 23 Q. Linda Rogers?
- 24 A. No.
- 25 Q. Are you familiar with someone by the name of

28

- 1 Skipper Wallace?
- 2 A. Yes.
- 3 Q. And who is Skipper Wallace?
- 4 A. Skipper Wallace is the person who is affiliated
- 5 or associated with the Republican County Chair's
- 6 Association, I believe.
- 7 Q. Do you have any communications with Mr. Wallace
- 8 about voter ID?
- 9 A. Not other than -- you know, I believe Mr. Wallace
- 10 probably testified in front of the committee. I would
- 11 assume that he did because he did on a number of
- 12 different issues. He would be the person who would
- 13 testify in front of the State Affairs Committee on
- 14 election issues and things like that.
- 15 Q. Did you have any communications, apart from his
- 16 testimony, from Mr. Wallace about voter ID issues?
- 17 A. Not that I recall.
- 18 Q. Are you familiar with someone by the name of
- 19 Maria Martinez?
- 20 A. No.
- 21 Q. Are you familiar with someone named Catherine
- 22 Englebreth?
- 23 A. Catherine who?
- 24 Q. Englebreth.
- 25 A. No.

29

1 Q. Have you heard of an organization called True to
 2 Vote?
 3 A. No.
 4 Q. Have you heard of an organization called the King
 5 Street Patriots?
 6 A. Yes.
 7 Q. Do you have any affiliation with them?
 8 A. No.
 9 Q. Did you have any communications with the King
 10 Street Patriots about voter ID?
 11 A. If I did it would have been as an entity or a
 12 person who represented that entity testifying before the
 13 committee.
 14 Q. I think I understand you. But just to be clear,
 15 you're saying any communications you would have had with
 16 them would have been them testifying at the State
 17 Affairs Committee?
 18 A. Right. I don't recall ever having -- and I had
 19 very few meetings like that on issues like that in my
 20 office. It would be something that would -- typically I
 21 would just say come to the committee and talk to the
 22 committee.
 23 Q. Okay. So --
 24 A. So that would be my interface with those folks.
 25 Q. And just to be clear, when you say "you have very

30

1 few meetings like that," what do you mean by that?
 2 A. Well, I mean typically serving in the
 3 legislature, serving on the finance committee, other
 4 capacities. I'm very seldom in my office. And so -- in
 5 fact, I'm never in the office. So I'll be in a
 6 committee room or in hearing or, you know, typically on
 7 the floor all day long. And so I typically don't
 8 entertain a lot of in office meetings with people about
 9 legislation pending before my committee. My standard
 10 thing is come to the committee and testify.
 11 Q. Got it. Can anybody come to the committee and
 12 testify?
 13 A. Yes.
 14 Q. During the times of the year when you are not in
 15 the legislative session, do you have meetings with
 16 people about potential legislative issues?
 17 A. From time to time. But, you know, not that many,
 18 quite frankly. I mean, there may be constituents in
 19 Lubbock or there may be something on workers'
 20 compensation or, you know, from time to time people will
 21 come to you with ideas. But that's probably like every
 22 member, you know, has some meetings and dealings with
 23 different trade organizations or work constituents.
 24 Q. When you say "not that many," is it -- can you
 25 just give me an approximate number?

31

1 A. No.
 2 Q. Like a couple a months?
 3 A. I'm not going to guess. But, you know, I will
 4 say this. Typically in Austin, you know, I will come
 5 during the interim once, maybe, a month for one day,
 6 maybe two. Usually it's before -- because of a hearing.
 7 Typically, if I have a meeting with someone it
 8 will be, 90 percent of the time, an agency head over an
 9 issue, whether it's a budget issue or an issue that I
 10 have jurisdiction over in State Affairs or in some
 11 committee or if I passed a bill. And if it's an
 12 insurance bill I want to meet with the commissioner and
 13 say, "What are you doing with regard to that?" Those
 14 are the kinds of meetings I have in Austin.
 15 In Lubbock I will have meetings from time to
 16 time. I try to never turn down a constituent who wants
 17 to come meet with me there. Or in San Angelo. I go to
 18 Childress. I have 51 counties now. I had 46. So
 19 it's -- you try to meet with your constituents, but at
 20 the same time, logistics also cause us some issues
 21 there.
 22 Q. And you said your district was in Western Texas;
 23 is that right?
 24 A. Yes, ma'am.
 25 Q. Can you describe, just very generally, the

32

1 geographic area?
 2 A. Sure. It's -- before redistricting, it was 46
 3 counties that spanned from the Panhandle all the way
 4 down to Eldorado, Texas. And the major -- the larger
 5 cities would be Lubbock and San Angelo. Came near
 6 Abilene and Amarillo and near Wichita Falls as well.
 7 Q. Can you tell me your staff members who work for
 8 you in your legislative capacity?
 9 A. Yes. My chief of staff is Porter Wilson. At
 10 that time my general council was Cory Pomeroy. The
 11 director for State Affairs and also general council is
 12 Jennifer Fagan. My staff person in charge of Article 2
 13 and health and human service issues is Jennifer
 14 Chambers. Sara Clifton is the staff person in charge
 15 of -- at that time -- she was with me at this time, in
 16 2011. And then numerous staff members that are -- that
 17 I can't remember the names of that are interim hires or
 18 rather, staff session hires, with regard to legal issues
 19 and things like that that, you know, younger lawyers
 20 that help us with the committee and briefing bills and
 21 working through problems with bills in the committee.
 22 Q. And for a couple of these people you said "at
 23 that time," and you were referring to during the 2011
 24 legislative session?
 25 A. Right. That's legislation.

33

1 Q. Which of these staff worked on the voter ID
2 issue?
3 A. Jennifer Fagan.
4 Q. Anybody else?
5 A. Probably not.
6 Q. Do you know someone by the name of Megan LaVoie?
7 A. Uh-huh.
8 Q. Who is Megan LaVoie?
9 A. I'm sorry. Megan is -- handles the media for us
10 primarily. She's a law student who has just graduated
11 and studying for the bar now.
12 Q. Is she a staff of yours?
13 A. Yes, she still is. I just -- don't tell her I
14 forgot.
15 Q. All right. How often do you communicate with
16 your staff during the legislative session?
17 A. Daily.
18 Q. And how do you usually communicate with them?
19 A. Directly.
20 Q. In terms of verbally?
21 A. Right.
22 Q. Do you ever e-mail with them?
23 A. You know, other than "can you come to the
24 office," yes. "Would you send me -- send down a granola
25 bar," or "would you order me lunch." Just logistical

34

1 things. I don't -- it's hard to communicate like that
2 when you're trying to listen to a hearing or something
3 like that. So at the end of the day, we meet before we
4 go home and we debrief about what's happened.
5 Q. So when you do communicate with them, do you have
6 a blackberry or a phone?
7 A. At that time I had a blackberry, but I didn't --
8 we didn't communicate other than for the purpose of,
9 "can you bring me a granola bar" or, "somebody is here"
10 or whatever. And that's it.
11 Q. Okay. Non-substantive communication?
12 A. Yeah. I'm not very good at that thumb typing
13 stuff, plus I don't -- I think if a member is at the
14 committee dios, you ought to be listening and not
15 communicating with folks. I feel strongly about that.
16 Q. Do you ever use -- when you said you have -- I
17 think I didn't get an answer. Did you say you used a
18 blackberry when you do that?
19 A. Right.
20 Q. And is that a personal blackberry or work
21 blackberry?
22 A. It was a personal blackberry or law firm
23 blackberry.
24 Q. And do you save the messages on that?
25 A. No.

35

1 Q. Do you delete them or do they automatically get
2 deleted?
3 A. I don't know what happens to them, quite frankly.
4 The blackberry quit working so I had to replace it. And
5 because that technology is, more or less, going
6 obsolete, I replaced it with an iPhone. And I
7 definitely can't work that.
8 Q. Me either, actually. Is there someone in your
9 office who maintains legislative records?
10 A. You know, I guess everybody does. We don't
11 have -- we follow whatever the secretary of the Senate
12 tells us to do. I assume my chief of staff probably
13 handles most of that for the committee. It would have
14 been Jennifer Fagan.
15 Q. So the secretary of the Senate issues a retention
16 policy about files?
17 A. Yes.
18 Q. Okay.
19 A. We follow that.
20 MS. MARANZANO: Can we have this marked?
21 (Exhibit No. 520 was marked.)
22 BY MS. MARANZANO:
23 Q. Senator, I'm showing you what we're marking, for
24 the record, as deposition Exhibit 520. Can you just
25 take a look at this and let me know if it looks familiar

36

1 to you?
2 A. Yes, ma'am.
3 Q. And what is this?
4 A. It is a notice of deposition for today.
5 Q. And when you received this notice, can -- well,
6 did you receive this notice?
7 A. Well, we did. And I instructed staff to assemble
8 the documents I think that are necessary to comply.
9 Q. And did the staff turn those documents over to
10 your attorney?
11 A. Yes, they did.
12 Q. Can I direct your attention to request No. 5,
13 which is on the second to last page. Do you know how
14 many documents you turned over that were responsive to
15 that request?
16 A. No, ma'am.
17 Q. Who in your staff conducted the search for these
18 documents?
19 A. I think that Ms. Fagan did.
20 Q. Do you know if she searched electronic documents
21 as well as hard copies of documents?
22 A. I assume that she did and followed the
23 instructions in the subpoena.
24 Q. Did you have any communications with her about
25 her search for documents?

37

1 A. Other than when the subpoena came in, she called
2 and said we were notified by subpoena. Of course, we
3 get those kind of requests all the time. Typically, she
4 will do those. And I said, "Well, go ahead and comply
5 with it and turn it over to the Attorney General's
6 office." It was more or less routine in our office to
7 do that sort of thing.

8 Q. It's routine because of public information
9 request?

10 A. Sure. Yeah.

11 Q. Did you have any files compiled already that you
12 had done for public request on this issue?

13 A. No, I don't think so.

14 Q. Are you familiar with Section 5 of the Voting
15 Rights Act?

16 A. Not -- I know it exists. I'm not an expert on
17 it.

18 Q. What's your understanding of the requirements
19 under Section 5?

20 A. Well, you know, I'm not -- I don't really want to
21 go into what my understanding of it is. I think that
22 is, Section 5 of the Voting Rights Act, I believe is the
23 requirement for preclearance; is that correct? Is this
24 a test?

25 Q. No. I'm not trying to test you, sir. I'm really

38

1 not.

2 MR. BRAZIL: You'll be graded later.

3 A. Thank you. What I'm trying to figure out is what
4 are you asking, I guess. It's not clear to me.

5 Q. (By Ms. Maranzano) Right. Well, let me ask you
6 a different question. Are you familiar with a
7 requirement under the Voting Rights Act by which Texas
8 has to submit election related changes to either the
9 Department of Justice or federal court to get
10 preclearance?

11 A. I am familiar that we are required to do that.

12 Q. Okay. Could you describe as a general matter any
13 steps of the legislature takes to increase the chances
14 that a law is going to be precleared by the Department
15 of Justice or a federal court?

16 MR. SWEETEN: I'm going to instruct you not
17 to answer on the basis of legislative privilege. The
18 question would require you to reveal your thoughts,
19 mental impression and motivation about legislation in
20 furtherance of the legislative process. So I'm going to
21 instruct you not to answer on that basis.

22 BY MS. MARANZANO:

23 Q. All right. Let me ask you this, Senator. Is
24 there anything based on the public record that you could
25 tell me about the steps the legislature takes in regards

39

1 to Section 5?

2 MR. SWEETEN: Again, if you will confine
3 your answers to matters of the public record. Do not
4 reveal your thoughts, mental impressions or motivations
5 about this.

6 A. The committees in the Texas Senate hold hearings.
7 Those hearings are recorded and the documents that are
8 presented to be included in the record are included in
9 the record. And that would be the public record. The
10 Senate debates are the same way, as far as we don't use
11 exhibits on the Senate floor. But the debates and the
12 amendments to bills are in the public record.

13 Q. And again, based on the public record, does the
14 legislature usually do some sort of factual analysis to
15 determine if a law is going to have a retrogressive
16 effect on minorities?

17 MR. SWEETEN: Objection; compound.

18 Objection. Don't answer if it requires you to reveal
19 your mental impressions, opinions, motivation about
20 legislation. You can refer to matters of the public
21 record. But if in referring to the public record you
22 would be revealing your mental impressions do not do so.
23 It's subject to privilege.

24 BY MS. MARANZANO:

25 Q. And just to be clear, this isn't really -- I'm

40

1 not asking about what you personally do. I'm asking
2 about steps the legislature takes, available in the
3 public record, in terms of a factual analysis about
4 election related changes and whether or not they have a
5 retrogressive effect?

6 MR. SWEETEN: Same instruction.

7 A. I think the public record reflects what we do
8 very clearly and we follow, you know, the -- in the
9 committees we have hearings, we have public hearings.
10 And the testimony that we receive; pros and cons,
11 analytical, not so analytical, is in the public record.

12 Q. And just in terms of a "yes" or "no" answer for
13 this one. Do you do anything beyond that testimony. Do
14 you do any analysis beyond that testimony?

15 MR. SWEETEN: Don't answer that question.
16 That would require you --

17 MS. MARANZANO: Not even to say "yes" or
18 "no"?

19 MR. SWEETEN: No, not even a "yes" or "no."
20 You're asking him about his mental impression,
21 motivation. Whether he does something beyond the public
22 record would go into that and he's not going to provide
23 it based upon the legislative privilege objection.

24 MS. MARANZANO: Okay. This isn't about him.
25 This is about steps the legislature takes. So it's not

41

1 his mental impressions. And I'm not trying to probe
 2 what it is, I'm just asking for a "yes" or "no."
 3 MR. SWEETEN: And, you know, respectfully,
 4 my response is that if you're asking him things beyond
 5 the public record, if things are done, then you would
 6 potentially be asking him to reveal communications he's
 7 had with other senators, with legislative staff, with
 8 State agencies, Texas legislative council constituents,
 9 you would be asking for his mental impressions and
 10 thought process. So with respect to that, I'm going to
 11 instruct him not to answer that question as posed.
 12 BY MS. MARANZANO:
 13 Q. You're following your counsel's instructions,
 14 just for the record?
 15 A. Yes, ma'am.
 16 Q. Thank you. Based on the public record, are there
 17 any steps that the legislature takes to build a record
 18 that supports an assertion that there's no
 19 discriminatory purpose behind the bill? Based on the
 20 public record.
 21 MR. SWEETEN: First of all, I think he's
 22 answered based on the public record. I think he's
 23 answered this question. Secondly, you're now asking him
 24 about his process as reflected in the public record.
 25 And in that regard, you're seeking to find out his

42

1 mental impressions, opinions and his motivations about
 2 legislation. So he's referred to the public record. He
 3 can do that, but he's not going to get into what his
 4 thinking is about how something complies with the Voting
 5 Rights Act. That is absolutely subject to the
 6 privilege.
 7 BY MS. MARANZANO:
 8 Q. Okay. Well, let me try it this way. We spoke
 9 about the public record in regard to the retrogressive
 10 effect. And you said people testify at hearings and
 11 they're all transcribed or recorded, I think you said.
 12 And now I'm just asking about, is there anything
 13 additional that happens on the public record that goes
 14 to building a record to support an assertion that
 15 there's no discriminatory purpose?
 16 A. First, I don't recall you ever asking me about
 17 specifically the retrogressive effect. So I'm not sure
 18 I understand your question. So if you could -- the
 19 foundation was fairly lengthy. If you could just --
 20 Q. Yes. I'm sorry. I thought my last question had
 21 been about the effect. That was when you said to me
 22 that there were hearings, the hearings were recorded
 23 people testified.
 24 A. Well, I just didn't hear the word retrogression
 25 effect.

43

1 Q. Yes. So this time I'm asking you about, based on
 2 the public record, does the legislature take steps to
 3 build a record that would support an assertion that
 4 there's no discriminatory purpose behind an act?
 5 MR. SWEETEN: Okay. You're asking him, does
 6 the legislature build a record to support facts and
 7 based upon the public record. In doing that, you're
 8 asking for more than what's on the public record.
 9 You're asking for, are they taking steps to build a
 10 record.
 11 MS. MARANZANO: On the record.
 12 MR. SWEETEN: He's not going to talk about
 13 his process on what steps they take, the purpose of
 14 those steps. He's not going to answer that question.
 15 You can ask him, you know, as to what's on the public
 16 record. But you're not going to get into his thoughts
 17 and mental impressions. There's a line there and these
 18 last few questions you're getting into his mental
 19 impressions and I'm not going to let him do that. That
 20 is subject to privilege.
 21 MS. MARANZANO: Okay. I am actually -- I am
 22 really not trying to get into his mental impressions.
 23 I'm trying to ask him about the steps taken on the
 24 record. And we went through the effect and now I'm
 25 asking about steps taken on the record that go to the

44

1 purpose of the legislature. What sort of steps does the
 2 legislature take on the public record that support an
 3 assertion that there's no discriminatory purpose behind
 4 the bill.
 5 MR. SWEETEN: Again, you're asking for his
 6 motivations in that question. He can testify about what
 7 is on the record. He's not going to testify about steps
 8 taken to build a record. And to answer that question.
 9 So you're treading into what is subject to the
 10 legislative privilege and I'm going to instruct him not
 11 to answer.
 12 BY MS. MARANZANO:
 13 Q. When you talked about the committee proceedings,
 14 are there any procedures, public procedures established
 15 by the committee that relate to Section 5 of the Voting
 16 Rights Act?
 17 MR. SWEETEN: You can testify about matter
 18 on the public record.
 19 A. I don't know if there are any specific rules or
 20 requirements with regard to any specific law of how we
 21 would handle anything.
 22 Q. (By Ms. Maranzano) Senator, What is Texas'
 23 current system for verifying a voter's identity?
 24 MR. SWEETEN: You can answer.
 25 A. Well, in the statute. I think you have -- there

45

1 is -- I think you present a voter registration card as
2 one. If you don't have the card, you can present other
3 forms of ID. I think generally that's it. I mean, if
4 you can show me the statute I can tell you specifically.

5 Q. If a voter doesn't have a voter registration
6 card, are you familiar with the forms of ID that the
7 voter would need to show?

8 A. I believe it's a driver's license or -- there are
9 other alternative forms of ID as well.

10 Q. Are there some non-photo IDs that a voter can
11 show?

12 A. I believe that's correct. Under the current law
13 before Senate Bill 14.

14 Q. Exactly, yes. Do you know if a utility bill is
15 one of those forms of identification?

16 A. Whatever the statute says is what it says.

17 Q. And if the voter doesn't have any of those forms
18 of identification, can a voter cast a provisional
19 ballot?

20 A. I think that's correct.

21 Q. And do you know the standards by which that
22 provisional ballot may or may not be counted?

23 MR. SWEETEN: Hold on a second. You're
24 asking about existing law. I'm going to let him answer
25 that to the extent he knows.

46

1 MS. MARANZANO: Thank you.

2 A. I will be -- you know, I'm like most lawyers I
3 would have to go to the statute and look. I'm not going
4 to guess on what it says specifically.

5 Q. (By Ms. Maranzano) Okay. Is it your
6 understanding that a voter does not need to take an
7 additional trip anywhere to in -- and show the registrar
8 one of the -- this is current law, one of the forms of
9 ID under current law in order for that provisional
10 ballot the be counted?

11 A. I would have to look at the statute. And I
12 didn't look at the statute to prepare.

13 Q. Okay. Is the current system for verifying a
14 voter's identity inadequate?

15 MR. SWEETEN: Objection. It calls for
16 matters of legislative privilege. Don't answer the
17 question.

18 BY MS. MARANZANO:

19 Q. Let me ask you this. Did anything come up on the
20 public record that reflects problems with the current
21 system for verifying a voter's identity?

22 MR. SWEETEN: You can answer the question as
23 phrased.

24 A. You would have to look at the public record. I
25 think -- you know, I don't recall specific anecdotal

47

1 testimony. I recall whatever is in the record, is in
2 the record is all I can say. I didn't look at the whole
3 record. It's a long record. And so I would be going
4 solely off of memory. And I'm not comfortable doing
5 that.

6 Q. So right now as you sit here, you're not aware of
7 problems that were testified to on the public record
8 with the current system of verifying a voter's identity?

9 A. That's not what I said. I just said I'm not
10 prepared to go into specific instances. It is in the
11 record. Whatever is in the record, is in the record.

12 Q. Okay. But right now -- but I'm just asking you
13 what you know right now, sitting here today, and you're
14 not prepared to testify about any?

15 A. Right now I know there was. But I can't recall
16 the specific instances to the degree of certainty that I
17 would be comfortable testifying under oath about.

18 Q. Okay. You recall there were problems that were
19 testified to?

20 A. Yes. I think there were. But you would have to
21 go to the record to see what they were.

22 Q. Well, what do you remember about the record?

23 A. I don't.

24 Q. You don't? So you can't tell me anything about
25 those problems?

48

1 A. I can tell you this -- and, you know, there were
2 issues. But I'm not prepared to go into specific anecdotal
3 situations. The record reflects that. And the record
4 will have to speak for that.

5 Q. Can you tell me when you first heard support for
6 enacting a photo identification law in Texas?

7 MR. SWEETEN: You can answer to the extent
8 it doesn't reveal matters of legislative privilege.

9 A. I can't remember specifically.

10 Q. (By Ms. Maranzano) Can you tell me
11 approximately?

12 A. No.

13 Q. Do you remember what the first voter
14 identification law that you worked on was?

15 A. I don't remember the specific bill. I know --
16 and I didn't work on them. I was never a sponsor of any
17 of these bills. They would either, when I took over as
18 State Affairs chairman that's the jurisdiction, voter
19 election laws are in that jurisdiction with a lot of
20 other things. And so I think there was an interim study
21 on that. I think there was -- there were bills that
22 were passed went through the committee after that.
23 Q. Okay.

24 MS. MARANZANO: Can we mark this?
25 (Exhibit No. 521 was marked.)

49

1 BY MS. MARANZANO:
 2 Q. Senator, I'm showing you what we're marking as
 3 deposition Exhibit 521. If you can take a look at it
 4 and tell me if it looks familiar to you?
 5 A. No.
 6 Q. No? Have you ever seen this bill before?
 7 A. I don't -- it's a House Bill. If it passed the
 8 House and came to the committee, I would assume I would.
 9 I don't know if it did pass the House.
 10 Q. Well, I'll represent to you that this bill did
 11 pass the House.
 12 A. Okay.
 13 Q. And it was referred to the State Affairs
 14 Committee.
 15 A. Okay.
 16 Q. Perhaps that refreshes your recollection
 17 slightly.
 18 A. Well, yes. If that's the case, then we would
 19 have heard this bill in the committee.
 20 Q. Do you recall if you did hear the bill?
 21 A. If you can tell me what year.
 22 Q. I'm sorry. This is from 2005.
 23 A. Okay. I assume we did hear the bill, but I don't
 24 know. You will have to look at the record.
 25 Q. Well, I will represent to you that this bill was

50

1 referred to and there was not a hearing on the bill. Do
 2 you have any recollection -- you can take a couple of
 3 minutes and maybe look it over and see if you have any
 4 recollection. You can see at the top it was introduced
 5 by -- it's House Bill -- for the record, it's House Bill
 6 1706.
 7 A. Okay. I do not know why the bill didn't get a
 8 hearing. That was seven years ago. There are a number
 9 of reasons why bills don't get hearings. So I couldn't
 10 tell you, nor do I know if the public record reflects
 11 why it didn't get a hearing. I don't know.
 12 Q. What are some of the reasons that a bill doesn't
 13 get hearing?
 14 MR. SWEETEN: Yeah. Don't reveal your
 15 thoughts, mental impressions about legislation in
 16 answering the question. That's subject to the
 17 legislative privilege.
 18 BY MS. MARANZANO:
 19 Q. Are you able to provide an answer?
 20 A. Well, I'm not sure I understand the question.
 21 Q. You said there are several reasons a bill might
 22 not get a hearing, so I was asking you what are those
 23 reasons?
 24 MR. SWEETEN: Again, don't reveal your
 25 thoughts or mental impressions. I'm also going to

51

1 object based on compound and vague. If you can answer
 2 it without revealing your thoughts and mental
 3 impressions or communications that you've had, then do
 4 so. But the you can't --
 5 A. The only thing I can do without -- without going
 6 into the legislative privilege is just generally in all
 7 committees: Number one, there's not support for the
 8 bill. Number two, it's not ready. It has flaws or
 9 technical flaws in it and you can't get any agreement to
 10 fix it. Number three, and sometimes this is number one,
 11 is that there's just not time. A bill doesn't get over
 12 to the Senate from the House until late in the session
 13 and there's just not time to take up the bill and hear
 14 it, especially if it is a bill that requires a lot of
 15 testimony. And there are just a lot of discretionary
 16 issues that are involved in generally -- in doing that.
 17 So that's basically -- that's a few of them. Sometimes
 18 they get tagged. They're procedural rules that members
 19 follow to prevent bills from getting heard that they
 20 don't want to have heard. So it's -- you know, a lot of
 21 different ways to -- and reasons why bills don't get
 22 hearings or why they don't -- they don't pass.
 23 Q. But what does it mean to have a bill tagged?
 24 A. In the rules require -- there's a 48 -- when the
 25 bill is in a committee, in a standing committee, it

52

1 requires -- a member can ask for a 48-hour hearing. And
 2 a 48-hour notice, which is typically twice the notice.
 3 So if it's -- you don't ever see that until the end of
 4 the session. And it -- you know, somebody will tag a
 5 bill and you'll run out of time to hear it.
 6 Q. I think the issue that you said before we talked
 7 about tagging was that there may just not be enough
 8 time. About how much time does a committee need to have
 9 a hearing and refer the bill to the floor?
 10 A. Depends on the bill.
 11 Q. Do you know about how much time a bill like
 12 HB 1706 would need?
 13 MR. SWEETEN: Objection. I think the
 14 question is vague. Also you -- don't reveal matters of
 15 legislative privilege about a specific bill. You can
 16 answer about general procedures as long as they're
 17 matters in public record, but don't reveal your mental
 18 impressions in answer.
 19 A. Would you repeat the question?
 20 Q. (By Ms. Maranzano) About how much time would a
 21 bill, such as HB 1706 or another voter ID bill, need to
 22 get heard in committee and then referred out?
 23 MR. SWEETEN: Same objection. Instruction.
 24 A. I can't answer that specifically. There is no
 25 formula for how much time it takes. It just depends on

53

1 the bill.
 2 Q. (By Ms. Maranzano) Okay. And can you just give
 3 me a sense of -- just a sense of what you mean by that?
 4 What about the bill informs how much time you need?
 5 MR. SWEETEN: Let's -- I'm going to object
 6 based upon compound, vague. Also don't reveal any
 7 thoughts, mental impressions or communications about any
 8 specific bill, legislative act in answering the
 9 question.
 10 A. Logistically, depends on how many witnesses you
 11 have, depends on the availability of members to be
 12 there. It depends on the length of the bill. A number
 13 of logistical objective things like that.
 14 Q. (By Ms. Maranzano) Okay. And one of the other
 15 issues you mentioned that sometimes prevents a bill from
 16 getting a hearing in committee is there might not be
 17 support for the bill. Were you referring to support in
 18 the committee or support in the Senate?
 19 MR. SWEETEN: And this is as a general
 20 matter.
 21 BY MS. MARANZANO:
 22 Q. As a general matter,
 23 A. A general matter, either way.
 24 Q. How do you usually know if a bill has support?
 25 MR. SWEETEN: You can answer as a general

54

1 matter.
 2 A. You don't, unless -- you may hear or know or what
 3 you may have a sense as a chairman in your judgment.
 4 Q. (By Ms. Maranzano) Do you make the determination
 5 of whether a bill has a hearing or not?
 6 MR. SWEETEN: Objection to the question as
 7 compound. And don't reveal matters subject to the
 8 legislative privilege including your mental impressions,
 9 thoughts and opinions. You can answer as a general
 10 matter of procedure, if you can. But don't reveal
 11 privilege.
 12 A. As a general matter, chairmen determine what
 13 bills are heard and when they're heard.
 14 Q. (By Ms. Maranzano) Can you direct your attention
 15 to Section 7 of HB 1706, and just take a quick look at
 16 that.
 17 A. What page is that on?
 18 Q. I'm sorry. Page 4 and I goes on to Page 5. And
 19 it looks like it also goes on to Page 6. And actually
 20 the top of 7?
 21 A. Okay.
 22 Q. Do you see that -- well, do you see that this
 23 legislation provides for a number of different forms of
 24 identification to be used?
 25 A. It appears to have a number of different options.

55

1 Q. And is there both photo ID and non-photo ID
 2 listed there?
 3 A. It looks like they all require that, but I may be
 4 wrong.
 5 Q. I'm sorry. It looks like they all require what?
 6 A. A photo identification.
 7 Q. Well, do you see that on Page 5 towards the
 8 bottom it says there's a Section B?
 9 A. Oh, there's an alternative, yeah. Utility bill,
 10 which is current law, official mail address.
 11 Q. So would you agree that it allows for both photo
 12 an non-photo ID?
 13 MR. SWEETEN: You can answer based on the
 14 text of the bill.
 15 A. I think that's what it says.
 16 Q. (By Ms. Maranzano) Did you have any
 17 communications about HB 1706, that you can recall?
 18 A. No, I don't recall any. I'm not saying I didn't.
 19 I just -- it's been a long time ago.
 20 Q. Right. I understand. Are you aware of the
 21 source of the legislative language for HB 1706?
 22 A. No, ma'am.
 23 Q. Do you know if your staff had any involvement in
 24 the development of HB 1706?
 25 A. I'm going to say probably not. It's a House

56

1 Bill. And so we wouldn't have been involved with that.
 2 And I don't know who the Senate sponsor was.
 3 Q. Is it pretty unusual for Senate staff to be
 4 involved in developing a House Bill?
 5 MR. SWEETEN: You can answer as a general
 6 matter.
 7 A. As a general matter, yes. But there were times
 8 when we worked with House members to build an early
 9 consensus, if that's ever possible.
 10 Q. (By Ms. Maranzano) Did you take a public
 11 position on HB 1706?
 12 A. I don't recall.
 13 Q. Do you know if there was any analysis done on
 14 HB 1706?
 15 MR. SWEETEN: Don't reveal matters of
 16 privilege. Objection; vague. Go ahead.
 17 A. The House may have done a bill analysis as they
 18 normally do and if it passed the House floor then --
 19 MR. SWEETEN: Yeah. I'm also going -- go
 20 ahead and finish.
 21 A. Oh, I'm sorry. I'm not aware that the Senate did
 22 anything.
 23 MR. SWEETEN: I'm going to object on the
 24 foundation as it calls for speculation.
 25 BY MS. MARANZANO:

57

1 Q. You're not aware that the Senate did any analysis
2 on House Bill 1706?

3 A. I don't recall any.

4 Q. What was the purpose of 1706, if you know?

5 MR. SWEETEN: You can answer as to the
6 general purpose. Don't provide the subjective intent of
7 anyone if you know.

8 A. I'm going to start by saying this is a House
9 Bill. And it was generated by the House members. It's
10 not a Senate Bill. So I'm not going to speculate on
11 what their purpose was. The general purpose of the
12 voter ID bill was to assure voter integrity or voting
13 integrity. And that's the primary general purpose of
14 all these types of bills. It's the general purpose of
15 what we do with a lot of the election bills. HAVA, even
16 MOVE was designed to help military voters. So that's
17 the general purpose.

18 Q. (By Ms. Maranzano) And based on the public
19 record, do you think that this would have accomplished
20 that goal?

21 MR. SWEETEN: No. Don't answer the
22 question. She's asking for your mental impressions and
23 thoughts about whether this bill accomplishes a certain
24 goal. So don't answer the question as phrased. It's
25 legislative privilege.

58

1 BY MS. MARANZANO:

2 Q. I assume you're not going to answer. Just for
3 the record, you're going to follow your counsel's
4 instruction not to answer that question?

5 A. Yes, ma'am.

6 Q. Do you recall a photo identification bill being
7 introduced in 2007?

8 A. No.

9 Q. Do you recall, in 2006, an interim report that
10 the State Affairs Committee did?

11 A. Yes, ma'am.

12 MS. MARANZANO: Can we have this marked?
13 (Exhibit No. 522 was marked.)

14 BY MS. MARANZANO:

15 Q. Can you take a look at that and let me know if
16 you recognize it?

17 A. I do.

18 Q. Is this a copy of the interim report that was
19 done in December of 2006?

20 A. Yes. It is.

21 Q. By the State Affairs Committee?

22 A. Yes, ma'am.

23 Q. What prompted this interim report? I mean, how
24 did it come about that the State Affairs Committee
25 issued this report?

59

1 MR. SWEETEN: Yeah. Don't answer the
2 question to the extent it would reveal thoughts, mental
3 impressions, opinions, motivation about legislation or
4 any communication you've had with legislators, staff,
5 State agencies, Texas ledge council.

6 A. If you'll refer to the record, the report was a
7 part of the interim charges that the Senate State
8 Affairs Committee was to take up.

9 Q. And do the interim charges come from the
10 governor?

11 A. No.

12 Q. Who do they come from?

13 A. Generally they come from the Lieutenant Governor
14 with, I think, input from other members of the Senate.

15 MR. SWEETEN: Are we at a point where we can
16 take a break in just a few minutes.

17 MS. MARANZANO: Yeah.

18 MR. SWEETEN: When you get to a logical
19 stopping point.

20 MS. MARANZANO: Yeah. Why don't we do it
21 now before we get into this too much. Thanks.

22 (Brief recess.)

23 BY MS. MARANZANO:

24 Q. So before the break we were taking a look at
25 interim report that the State Affairs Committee did.

60

1 Can you take a look for me -- at the first page is a
2 letter that's written to you. And the signatures are on
3 the next page. It's from Senator Lucio and Senator
4 Ellis. Do you see that letter?

5 A. Yes, ma'am.

6 Q. You tell me, were there any members of the
7 committee other than Senator Lucio and Senator Ellis who
8 were minority members?

9 A. Who?

10 Q. Who were on the committee when this report was
11 issued.

12 A. The names of the committee members are on the
13 first page on the letterhead. And then I think all
14 members signed the report.

15 Q. And were any, other than Senator Ellis and
16 Senator Lucio, racial or ethnic minorities?

17 A. Not according to this list. Well, Frank Madla
18 was a member, but I think he -- I'm not sure why he
19 wasn't on the list. Maybe he had stopped serving or
20 maybe that was an old letterhead that shouldn't have
21 been used. But I can't -- it shows that he is on the
22 committee. And I recall that he was on the committee
23 for a while.

24 Q. His name was?

25 A. Frank Madla.

61

1 Q. And what race or ethnicity is he?
 2 A. Hispanic. He may have gone off and -- he may
 3 have been -- I think that he lost his reelection and
 4 that may have been why he didn't -- the report was done
 5 after January 1st so that may have been why he wasn't on
 6 it.
 7 Q. I see. Okay. What was the purpose of this
 8 report?
 9 A. General purpose was to as stated in the charge.
 10 MR. SWEETEN: You can refer to matters of
 11 public record. I don't want you to give -- you don't
 12 have to give the general -- you've answered the
 13 question.
 14 A. The general purpose as stated in the charge.
 15 Q. (By Ms. Maranzano) Can you tell me what that is?
 16 A. Well, the record reflects that -- I don't think
 17 you provided the whole report.
 18 Q. I'm sorry. I didn't.
 19 A. The entire report the charge in it.
 20 Q. Okay. And I should have said that earlier. This
 21 is actually an excerpt from the report. Well, what's
 22 your understanding, as you sit here today, as to what
 23 the purpose was?
 24 MR. SWEETEN: Again, you can refer to
 25 matters of public record.

62

1 A. Purpose of what?
 2 Q. (By Ms. Maranzano) Of this report.
 3 A. The -- that you have before me?
 4 Q. Let me narrow it, because what I'm interested in
 5 is the section of the report that says here, which looks
 6 like there were several different issues you looked at.
 7 And this was related to charge No. 3. And I think that
 8 this might be the charge that you're referring to under
 9 charge No. 3 on Page 13?
 10 MR. SWEETEN: Again, you can refer to
 11 matters in the public record in answering the question.
 12 Don't reveal matters that are subject to the privilege.
 13 A. The charge No. 3 is -- is the purpose for
 14 writing -- general purpose for writing a report. And
 15 the record here reflects the instructions provided in
 16 the charge.
 17 Q. (By Ms. Maranzano) Do you see that first
 18 sentence under charge No. 3 says, "Study and make
 19 recommendations on how election of firms could verify
 20 the identity of a voter without hindering a person's
 21 right to vote?"
 22 A. I do.
 23 Q. Did the committee come up with a recommendation
 24 on that?
 25 MR. SWEETEN: Again, you can refer to

63

1 matters of the public record. Don't reveal matters of
 2 privilege including conversations you've had with anyone
 3 or your own thoughts or mental impressions.
 4 A. The report, which was prepared in 2006, reflects
 5 the committee's carrying out the charge. Number,
 6 whatever it is, 13, I believe. Whatever the charge
 7 is -- it's charge No. 3.
 8 Q. (By Ms. Maranzano) Can you just turn back to the
 9 letter for a second. It says -- there's a sentence in
 10 the second paragraph that says, "The committee makes no
 11 recommendations regarding policy issues in favor or in
 12 opposition to voter identification or ballot
 13 authenticity."
 14 A. Where is this? I'm sorry.
 15 Q. It's in that letter that we were looking at.
 16 It's in the second -- yeah, that one.
 17 A. The one from Senator Ellis.
 18 Q. From Senator Ellis and Lucio. And it's in that
 19 second paragraph and it's a phrase of the second
 20 sentence.
 21 MR. SWEETEN: It's right there.
 22 A. Okay.
 23 Q. (By Ms. Maranzano) Does that refresh your
 24 recollection as to whether a recommendation was made
 25 about voter identification and ballot authenticity?

64

1 MR. SWEETEN: You can reveal matters of the
 2 public record.
 3 A. It reflects what Senator Ellis said and Senator
 4 Lucio.
 5 Q. (By Ms. Maranzano) Do you have a different
 6 recollection?
 7 A. No.
 8 MR. SWEETEN: Wait a minute. Can you
 9 rephrase the question? Do you have a different
 10 recollection of what?
 11 MS. MARANZANO: Well, he said --
 12 MR. SWEETEN: That it says this?
 13 MS. MARANZANO: He said this reflects what
 14 Senator Ellis and Senator Lucio said. I'm sorry.
 15 BY MS. MARANZANO:
 16 Q. Do you have a different recollection of what
 17 occurred?
 18 MR. SWEETEN: You can refer to matters of
 19 the public record. Don't reveal matters of privilege.
 20 MS. MARANZANO: I believe this should all be
 21 a public record question.
 22 MR. SWEETEN: Are you asking him -- I don't
 23 understand what you're asking him. Are you asking him
 24 does it say what it says. Are you asking him did he
 25 write the letter.

65

1 MS. MARANZANO: No. I'm asking did the
2 committee make a recommendation regarding voter
3 identification.

4 MR. SWEETEN: You can refer to matters of
5 public record.

6 A. I think you just have to read the report and
7 determine that. And the report speaks for itself.

8 Q. (By Ms. Maranzano) All right. But I'm just
9 asking you, specifically I'm just wanting to find out
10 your knowledge. And so as you sit here today, do you
11 have a recollection as to whether there was a
12 recommendation made?

13 MR. SWEETEN: You can answer.

14 A. The report reflects.

15 MR. SWEETEN: Go ahead. Sorry.

16 A. The report reflects what we did seven years ago.

17 Q. (By Ms. Maranzano) Okay. And did you -- did the
18 committee thoroughly study this issue prior to making
19 the report based on the public record?

20 MR. SWEETEN: Yeah. Don't answer the
21 question as asked. The question directly asks your
22 thought processes. I mean, the term "thoroughly" asks
23 for your mental impressions, opinions, motivation about
24 legislation. Could implicate discussions. Don't answer
25 as phrased.

66

1 BY MS. MARANZANO:

2 Q. Okay. Let me ask it this way.

3 MR. SWEETEN: Legislative privilege.

4 BY MS. MARANZANO:

5 Q. What did the committee do in order to issue this
6 report?

7 MR. SWEETEN: You can refer to matters of
8 the public record. Don't reveal your processes, mental
9 impressions, opinions, motivations about legislation.

10 A. I believe the report is fairly clear and specific
11 what we did.

12 Q. (By Ms. Maranzano) And as you sit here today,
13 can you add any testimony to that?

14 MR. SWEETEN: Don't reveal matters of
15 privilege. You can refer to matter of the public
16 record. But your thoughts and mental impressions are
17 your own and are subject to the legislative privilege.

18 A. I wouldn't be able to elaborate further than
19 what's in the report.

20 Q. (By Ms. Maranzano) Okay. Can you, in that same
21 paragraph that we were talking about in the letter, do
22 you see there's a sentence that says, "However,
23 Georgia"?

24 A. Let's -- when you say "letter," you're referring
25 to Senator Ellis's letter.

67

1 Q. Yes. Exactly. Same paragraph -- second
2 paragraph. But this one is towards the bottom. The
3 sentence starts with, "However, Georgia Secretary of
4 State, Cathy Cox, recently completed a demographic
5 analysis revealing that between a quarter and a third of
6 senior and African-American voters lacked State photo
7 identification, thus disenfranchising them from the
8 election process." Do you know if that was a study that
9 was looked at by the State Affairs Committee in the
10 public record prior to issuing this report?

11 A. No, I do not know.

12 Q. And can you look at the last paragraph on that
13 page? There's a sentence that says, "It is our shared
14 belief that anti-fraud measures adopted by the federal
15 Help America Vote Act sufficiently deter voter fraud and
16 that additional photo identification measures are
17 unnecessary." Did the committee, based on the public
18 record, analyze whether the identification under the
19 Help America Vote Act would sufficiently deter voter
20 fraud?

21 MR. SWEETEN: Yeah. Don't answer the
22 question to the extent it requires you to reveal your
23 mental thoughts, impressions, analysis, motivation about
24 legislation. You can refer to matters of the public
25 record in answering it, but other than that don't answer

68

1 it.

2 A. I don't recall other than what's in the report.

3 Q. (By Ms. Maranzano) Can you look at Page 25 and
4 26 in the report for me? On Page 25, do you see a chart
5 that talks about voter fraud investigation from 2006?

6 A. Yes.

7 Q. And the fourth one down says, "unspecified
8 allegations." Can you tell me what that means?

9 MR. SWEETEN: You can refer to matters of
10 the public record. Don't reveal your thoughts or mental
11 impressions in answering the question.

12 A. I don't recall.

13 Q. (By Ms. Maranzano) A few down below that there's
14 one that says, "unlawfully accepting a voter and
15 illegally voting." Can you tell me what that means?

16 MR. SWEETEN: Same instruction.

17 A. No. I would have to -- I don't recall what that
18 is.

19 Q. (By Ms. Maranzano) And a few below that,
20 "illegal ballot handling," do you recall what that
21 means?

22 MR. SWEETEN: Same thing. You can refer to
23 matters of the public record. Don't reveal your mental
24 thoughts and impressions about that, other than what's
25 on the public record.

69

1 A. I don't recall specifically what that refers to.
 2 Q. (By Ms. Maranzano) Do you see on -- that
 3 chart -- am I correct, that chart is labeled "voter
 4 fraud investigations"?
 5 A. Yes.
 6 Q. And on the next page there's a chart that's
 7 listed "voter fraud convictions"?
 8 A. Yes.
 9 Q. And do you see in that paragraph below it says,
 10 "Although there have been three instances of alleged
 11 illegal voting which may include circumstances prevented
 12 by voter photo ID, only one of these has been fully
 13 investigated and referred for criminal prosecution." Do
 14 you know if that case that's referred to there, that was
 15 referred for prosecution, resulted in a conviction?
 16 MR. SWEETEN: Yeah. Don't answer the
 17 question except for to the extent it's a matter of
 18 public record.
 19 A. I don't know.
 20 Q. (By Ms. Maranzano) Do you remember any details
 21 about that case, based on the public record?
 22 A. No.
 23 Q. Do you remember any details about the other cases
 24 that may have been prevented by a voter photo ID based
 25 on the public record?

70

1 MR. SWEETEN: Same objection; legislative
 2 privilege, but you can answer to the extent you can
 3 refer to public record.
 4 A. I don't know.
 5 Q. (By Ms. Maranzano) After this report was issued,
 6 were there any bills introduced to prevent voter fraud
 7 in the vote by mail process, based on the public record
 8 that was introduced?
 9 MR. SWEETEN: Well, you're asking -- no.
 10 You're asking were there bills --
 11 MS. MARANZANO: After the report. Not
 12 related to the report.
 13 MR. SWEETEN: If you want to ask him if
 14 there were bills related to photo identification, I'll
 15 let him answer the question. You're asking him to
 16 address a problem, is what you've put in -- and I think
 17 this that's intruding into legislative purpose. In
 18 other words, you're asking as result of this, what is
 19 the effect to introduce X. He's not going to answer it
 20 as phrased. I will let him answer if chronologically an
 21 additional photo ID bill was introduced, matters of the
 22 public record, he can refer to. But he's not going to
 23 reveal his thoughts and mental impressions, as subtle as
 24 you want to be, he's not going to do that.
 25 BY MS. MARANZANO:

71

1 Q. Okay. No, I've got you. How about I ask it like
 2 this. In the 2007 legislative session, were there bills
 3 introduced related to the vote by mail process?
 4 A. Number one, I didn't introduce any bills.
 5 Q. Okay.
 6 A. Number two, there may be bills -- the members
 7 introduce about 5,000 bills a session. So there may
 8 have been bills. I'm not familiar with them,
 9 specifically.
 10 Q. Do you recall having any hearings on any bills
 11 about the vote by mail process in the State Affairs
 12 Committee?
 13 MR. SWEETEN: You can answer.
 14 BY MS. MARANZANO:
 15 Q. In the 2007 legislative session?
 16 A. As we sit here today, no. If you show me a
 17 record, I might refresh my recollection. But if we had,
 18 in that committee, several hundred bills and I'm not
 19 sure -- when you start talking dates I just can't -- a
 20 lot of water has been under the bridge since 2007 so I
 21 can't give you a specific answer.
 22 Q. How about do you remember any bills related to
 23 vote by mail on which the State Affairs Committee heard
 24 testimony in either the 2009 or 2011 legislative
 25 sessions?

72

1 MR. SWEETEN: You can answer as phrased.
 2 A. All of these years run together and so I can't
 3 give you a specific time frame of when we heard bills,
 4 unless you show me the bill.
 5 Q. (By Ms. Maranzano) Okay. But sitting here
 6 today, and I'm not trying to ask you which session it
 7 was introduced, but do you have a recollection of
 8 hearings in the State Affairs Committee on vote by mail
 9 bills?
 10 A. I think we did. But, you know, again, we hear a
 11 lot of bills. And so I believe we did have some
 12 legislation in regard to vote by mail. I'm not sure if
 13 I sponsored it, it was part of an omnibus bill or what.
 14 But I can't recall, specifically, the details around
 15 that.
 16 Q. Okay. Fair enough. Can you look at the page
 17 that says Page 28 at the bottom. And there's a
 18 subheading that says "conclusion." Under the second
 19 paragraph in that section, there's a sentence that
 20 starts with 200. It says, "244 of Texas' 254 counties,
 21 96 percent have at least one office." If you look at the
 22 sentence before, I think it's referring to driver's
 23 license offices. Would you agree with that?
 24 A. I'm not finding it.
 25 Q. I'm sorry?

73

1 A. Let me find it. Oh, it's in the second

2 paragraph. Yeah, I see.

3 Q. Do you see the sentence now, 200?

4 A. Yes, ma'am.

5 Q. And that's referring to driver's license offices?

6 A. That's what it says.

7 Q. Do you know how many counties currently have

8 driver's license offices in Texas?

9 A. I couldn't tell you.

10 Q. Based on the public record of what occurred in
11 the committee, did the committee determine that the
12 number of driver's license offices in the state was a
13 component that needed to be looked at when analyzing
14 voter ID legislation?

15 MR. SWEETEN: Don't answer it. It requests
16 information that would be subject to the legislative
17 privilege. You can refer to the record for factual
18 matters, but don't reveal your processes or analysis.

19 A. The report speaks for itself on that issue.

20 Q. (By Ms. Maranzano) And can you look at the
21 paragraph below that. And the sentence that says,
22 "Opponents of voter ID legislation requiring a photo ID
23 for foreign and elderly voters. However, as the lack of
24 reports on voter fraud, there are no studies to believe
25 status to support this claim." Based on the public

74

1 record, did the committee make any effort to look into
2 whether -- how many minority voters, minority registered
3 voters possessed forms of photo identification?

4 MR. SWEETEN: Don't answer the question as
5 phrased. It calls for matters of legislative privilege.

6 MS. MARANZANO: Mr. Sweeten, can he testify
7 at least as to whether this issue was discussed on the
8 public record?

9 MR. SWEETEN: I will allow him to answer
10 that question, was the issue discussed on the public
11 record, yes. Were any steps taken -- your previous
12 question was, were any steps taken to do an analysis is
13 not appropriate. But, yeah, he can answer that
14 question.

15 BY MS. MARANZANO:

16 Q. Okay. Let me ask you, were any discussions of
17 that taken -- held on the public record?

18 A. You'll have to look at the public record. I
19 don't -- that's seven years ago and, you know, I can't
20 remember anything specifically -- or can't remember what
21 specific debates or conversations. Again you've got --
22 we do a lot of legislation. And it's not -- that's a
23 long time ago. The report, in the record of the report,
24 would be the best evidence of what we considered and
25 what the committee conclusions were.

75

1 Q. When you're having an interim -- when you're

2 creating an interim report like this one, do you have

3 public testimony in front of the State Affairs Committee
4 as with -- as you testified happened on other matters in
5 front of the State Affairs Committee?

6 A. On most issues, yes.

7 Q. Do you recall if that occurred with this report?

8 A. No. You know, it may -- the public record would
9 have to reveal that.

10 Q. Can you look at the last sentence in that
11 paragraph that we were just talking about which says,
12 "It is unknown whether the current level of voter fraud
13 will decrease, but a voter photo ID law will certainly
14 prevent some fraud. At the very least it would increase
15 voter confidence." Can you tell me if there were
16 discussions on the public record that would allow you
17 to -- were there discussions on the public record about
18 those statements?

19 A. You would have to look at the public record.

20 Q. You have no independent recollection?

21 A. I don't.

22 Q. Can you look at the next page for me. There's a
23 subheading that says "recommendations." Under 3 A, do
24 you see that second bullet?

25 A. I do.

76

1 Q. It says, "Issuance of qualifying photo IDs free
2 of charge to any voter requesting, regardless of
3 personal income." Can you tell me what was the purpose
4 of including that language?

5 MR. SWEETEN: Don't answer the question if
6 she's asking for your mental thoughts, processes,
7 analyses.

8 MS. MARANZANO: What about the purpose of
9 the committee, this legislative purpose?

10 MR. SWEETEN: If you're asking him what is
11 the purpose of the committee.

12 MS. MARANZANO: For making this
13 recommendation.

14 MR. SWEETEN: No, he's not going to answer
15 as to the specific recommendation set forth throughout
16 whatever these recommendations are. That would require
17 him to reveal matters of legislative privilege. He can
18 refer to the record itself. But he's not going to
19 answer based on his mental impressions, thoughts,
20 opinions, analysis. Don't answer except to the extent
21 it's a matter of public record.

22 MS. MARANZANO: For the record, I disagree.
23 I think that's a question as to the general legislative
24 purpose, which I believe the order allows us to ask.

25 MR. SWEETEN: Let's pull the order out.

<p style="text-align: center;">77</p> <p>1 MS. MARANZANO: I'm referring to Page 11.</p> <p>2 MR. SWEETEN: I'm going to go to the order</p> <p>3 on general purpose. Let's do that first. The order</p> <p>4 that I'm reading is dated 5/17/12. And it says, "It is</p> <p>5 ordered that to the extent such a privilege exists, that</p> <p>6 privilege does not protect testimony with respect to the</p> <p>7 general purpose or the purpose of the legislature as a</p> <p>8 whole in enacting Senate Bill 14 as opposed to the</p> <p>9 subjective intent of the legislator." So he can answer</p> <p>10 as to the general purpose of legislation. You're now</p> <p>11 asking him about, not legislation, but instead you're</p> <p>12 asking him about something called the Senate Committee</p> <p>13 on State Affairs interim report to the 80th Legislature.</p> <p>14 In particular you're asking him about paragraph 3A.2 of</p> <p>15 Page 29 of that report and what its purpose was. That</p> <p>16 is --</p> <p>17 MS. MARANZANO: No, no, no.</p> <p>18 MR. SWEETEN: That is not the same thing.</p> <p>19 He can talk about general purpose of a statute. He's</p> <p>20 not going to talk about general purpose of different</p> <p>21 bullet points within that recommendation. That is not</p> <p>22 contemplated by the order that we just read. Go ahead.</p> <p>23 MS. MARANZANO: Mr. Sweeten, I wasn't</p> <p>24 asking -- the way I interpret what you just read is that</p> <p>25 I'm not allowed to ask about his subjective motivations.</p>	<p style="text-align: center;">79</p> <p>1 asking him what he means within that bullet point. And</p> <p>2 that is not what the court has said. We will give</p> <p>3 general purpose. We're not going to give bullet by</p> <p>4 bullet interpretation of what you meant at this date on</p> <p>5 this report. That is beyond what the court has ordered.</p> <p>6 I think that is beyond the scope of the legislative</p> <p>7 privilege that I am now asserting.</p> <p>8 MS. MARANZANO: All right. Well, we've got</p> <p>9 to move on.</p> <p>10 BY MS. MARANZANO:</p> <p>11 Q. And I think we are done with this document. So</p> <p>12 you can put that aside. And I believe before -- when we</p> <p>13 started looking at this deposition I asked you if you</p> <p>14 recall the photo ID bill being introduced in 2007 and I</p> <p>15 think you said no; is that correct?</p> <p>16 A. That's right. I don't recall a Senate Bill or</p> <p>17 House Bill or -- in 2007, whether we considered the</p> <p>18 bill. It seems like we did, but I can't recall</p> <p>19 specifically that.</p> <p>20 MS. MARANZANO: Okay. This we can mark as</p> <p>21 Exhibit 28 because we've previously marked it.</p> <p>22 (Exhibit No. 28 was previously marked.)</p> <p>23 BY MS. MARANZANO:</p> <p>24 Q. I'm showing you what we're marking as deposition</p> <p>25 Exhibit 28. If you can take a look at that and let me</p>
<p style="text-align: center;">78</p> <p>1 I'm not asking that. I'm asking the committee's purpose</p> <p>2 for putting this bullet in. And I'm reading from the</p> <p>3 order that we got on June 5th, Page 11. It says, "With</p> <p>4 respect to deposition testimony this court has already</p> <p>5 ordered that foundational privilege questions are</p> <p>6 proper, as are questions regarding overall legislative</p> <p>7 purpose, as opposed to an individual legislator's motive</p> <p>8 with respect to the bill." I'm not asking for his</p> <p>9 motive. I'm asking for the committee's purpose.</p> <p>10 MR. SWEETEN: Show me where you just read</p> <p>11 because there's an important word in there.</p> <p>12 MS. MARANZANO: F.</p> <p>13 MR. SWEETEN: F what?</p> <p>14 MS. MARANZANO: The first sentence under F</p> <p>15 on Page 11.</p> <p>16 MR. SWEETEN: "With respect to the</p> <p>17 deposition testimony this court has already ordered that</p> <p>18 foundational privilege questions are proper," which</p> <p>19 we're allowing. You'll agree we're completely allowing.</p> <p>20 MS. MARANZANO: Yes.</p> <p>21 MR. SWEETEN: "As are questions regarding</p> <p>22 overall legislative purpose as opposed to an individual</p> <p>23 legislator's motive with respect to the bill." This</p> <p>24 isn't a bill. This is an interim report. It is a</p> <p>25 sub-subparagraph of an interim report. And you're</p>	<p style="text-align: center;">80</p> <p>1 know if you recognize this, this bill.</p> <p>2 A. I recognize it as House Bill 218. And it shows</p> <p>3 on there that it was apparently filed before the end of</p> <p>4 2007 legislative session, if it was filed. And it</p> <p>5 appears it was because it was assigned a number, 218.</p> <p>6 Q. Are you familiar with the provisions of House</p> <p>7 Bill 218?</p> <p>8 A. As we sit here today, no.</p> <p>9 Q. Can you take a look at Section 11 of the bill</p> <p>10 which is on page -- Section 11, looks like it starts on</p> <p>11 Page 9.</p> <p>12 A. Okay.</p> <p>13 Q. Does it appear that, for the most part, House</p> <p>14 Bill 218 follows House Bill 1706?</p> <p>15 MR. SWEETEN: You can refer to the text of</p> <p>16 the bill, matters of the public record.</p> <p>17 A. Well, it would take a while to do a side by side</p> <p>18 analysis.</p> <p>19 Q. For the most part, just generally.</p> <p>20 A. They are both bills relating to requiring a voter</p> <p>21 to present proof of identification.</p> <p>22 Q. And do you see that House Bill 218 allows for</p> <p>23 both photo and non-photo identification to be presented?</p> <p>24 A. If you would point me to where you reach that</p> <p>25 conclusion.</p>

81

1 Q. Sure. So on Page 10 there's a subsection B.
 2 A. Yes, I see that.
 3 Q. Okay. And would you agree that allows for some
 4 forms of non-photo identification?
 5 A. It states that the following documentation is
 6 acceptable of proof of identification under this chapter
 7 and then it lists a number of things. And it appears
 8 that some of those things do not have a photo ID.
 9 Q. Did you or did anybody in your office my a role
 10 in the development of House Bill 218?
 11 A. Because it's a House Bill, no.
 12 Q. I'm sorry. You said no?
 13 A. We did not.
 14 Q. Did you have communications about House Bill 218?
 15 A. With whom?
 16 Q. Anybody. First let me just ask if you did?
 17 A. Not that I recall -- well, when?
 18 Q. At any point.
 19 A. Today?
 20 Q. Other than at this deposition, have you had
 21 communications about House Bill 218, that you recall, as
 22 you're sitting here?
 23 A. I don't recall any.
 24 Q. Are you aware of whether your staff had any
 25 communications about House Bill 218?

82

1 A. I do not know.
 2 Q. If they did, do you think you would know?
 3 A. Not necessarily.
 4 Q. Did you monitor the consideration of House Bill
 5 218 in the House?
 6 A. No.
 7 Q. Do you recall if House Bill 218 was referred to
 8 the State Affairs Committee?
 9 A. I don't know if it passed the House. If it did
 10 pass the House, you know, whatever the record shows, the
 11 record shows. That was in 2007. So that was five years
 12 ago.
 13 (Exhibit No. 523 was marked.)
 14 BY MS. MARANZANO:
 15 Q. So I only have one copy of this. I'm showing you
 16 what we're marking as deposition Exhibit 523 which is --
 17 well, can you tell me what that is?
 18 A. The title is Texas Legislature Online History.
 19 Q. Can you take a look at that and just let me know
 20 if that refreshes your recollection at all as to the
 21 procedural history of House Bill 218?
 22 A. Well, it's a record of the history. I'm not sure
 23 it refreshes my recollection of anything.
 24 Q. Fair enough.
 25 A. But it appears that, yes, it doesn't refresh my

83

1 memory, but it would reflect what happened to the bill.
 2 Q. And does it look like the bill passed the House?
 3 A. According to this document, it passed to
 4 engrossment on 4/23/07.
 5 Q. Did you have any communications with anybody
 6 about carrying House Bill 218 in the Senate?
 7 MR. SWEETEN: You can answer the question as
 8 phrased, but don't reveal the substance of any
 9 communications.
 10 A. I really don't remember. Some people may tell
 11 you they're going to carry a bill or whatever. But I
 12 don't recall in this particular instance how that came
 13 about.
 14 Q. (By Ms. Maranzano) As a general matter, how is
 15 it usually determined what senator will carry a bill
 16 that passes the House?
 17 A. There is no -- chairmen are different about how
 18 they do that. Some chairmen are very particular and
 19 some aren't. And so it just depends on what committee
 20 in the House or the Senate the bill goes to.
 21 Q. Can you tell me how you do it just as general
 22 matter?
 23 MR. SWEETEN: I think you're asking for him
 24 to reveal his mental impressions and thought process.
 25 How would determine -- carries a bill if he did. So

84

1 objection; legislative privilege. Instruct not to
 2 answer.
 3 BY MS. MARANZANO:
 4 Q. Did you and Senator Fraser communicate about
 5 House Bill 218?
 6 MR. SWEETEN: You can answer the question as
 7 phrased.
 8 A. I'm sure we did.
 9 Q. (By Ms. Maranzano) Do you have any recollection
 10 of communicating with him?
 11 A. No. No.
 12 Q. Are you aware of any communications about House
 13 Bill 218 that reflect concerns that this bill would have
 14 a disproportionate impact on minority voters?
 15 MR. SWEETEN: Don't answer the question as
 16 phrased. This is more than a general subject matter
 17 description. If you want to rephrase it and put less of
 18 a -- you know, lead up to the question, then he can
 19 answer it if you rephrase it. Right now I'm going to
 20 instruct him not to answer that question.
 21 BY MS. MARANZANO:
 22 Q. Let me try it this way. Did you have any
 23 communications about House Bill 218 with groups
 24 representing minority voters?
 25 MR. SWEETEN: You can answer.

<p style="text-align: center;">85</p> <p>1 A. Communications with groups, what do you mean by</p> <p>2 groups?</p> <p>3 Q. (By Ms. Maranzano) Groups who are representing</p> <p>4 the interest of minority voters?</p> <p>5 A. The record of the committee will reflect those</p> <p>6 communications.</p> <p>7 Q. So apart from the committee, you didn't -- you</p> <p>8 aren't aware of any other communications?</p> <p>9 A. I'm not aware or recall any of those.</p> <p>10 Q. Do you recall any communications, apart from</p> <p>11 testimony in front of the committee, with local elected</p> <p>12 officials about House Bill 218?</p> <p>13 A. Do I recall, I really don't. When you say "local</p> <p>14 elected officials," what are you talking about, who are</p> <p>15 you talking about?</p> <p>16 Q. County officials, voter registrars.</p> <p>17 A. I don't recall any. If there are, typically with</p> <p>18 regard to procedural issues and things like that are</p> <p>19 necessary in implementing a new voting process, we hear</p> <p>20 from the committees, the election officials of</p> <p>21 committees; this causes this issue, this causes this,</p> <p>22 this causes that. You need to take into account that.</p> <p>23 And that would be typically done through the hearing</p> <p>24 process. We may have information about that. But with</p> <p>25 regard to the general policy consideration, I don't</p>	<p style="text-align: center;">87</p> <p>1 Bill 218?</p> <p>2 A. At what point?</p> <p>3 Q. Overall. Let me ask you. Do you have a</p> <p>4 recollection of it, first?</p> <p>5 A. I have a recollection, generally, of the fact</p> <p>6 that we had a voter ID bill go through the committee and</p> <p>7 considered by the Senate.</p> <p>8 Q. Was the bill amended in the committee?</p> <p>9 A. I don't recall. The record would have to reflect</p> <p>10 that.</p> <p>11 Q. Can you tell me how the witnesses who testified</p> <p>12 on House Bill 218 were selected?</p> <p>13 MR. SWEETEN: Don't answer the question. It</p> <p>14 would call for your mental impressions, thoughts,</p> <p>15 opinions about legislation.</p> <p>16 BY MS. MARANZANO:</p> <p>17 Q. And you're following your counsel's instruction?</p> <p>18 A. Yes.</p> <p>19 Q. Was House Bill 218 voted out of committee, to the</p> <p>20 best of your recollection?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall if it was voted out of committee on</p> <p>23 party line?</p> <p>24 A. The record would have to reflect the record vote</p> <p>25 of the members of the Senate and the committee.</p>
<p style="text-align: center;">86</p> <p>1 recall any.</p> <p>2 Q. What was the purpose of House Bill 218?</p> <p>3 A. To preserve voter integrity or ballot integrity.</p> <p>4 Q. Based on the public record, was there any</p> <p>5 evidence that a problem existed with ballot integrity?</p> <p>6 MR. SWEETEN: Objection to the extent that</p> <p>7 it asks for your mental impressions about any problem</p> <p>8 that any legislation was attempting to address. You can</p> <p>9 refer to the public record as to anything you've heard</p> <p>10 regarding a problem. But don't reveal your mental</p> <p>11 impressions or thoughts about why you worked on a bill,</p> <p>12 what a bill was meant to address. You can just discuss</p> <p>13 what's in the public record.</p> <p>14 A. The public record reflects what information the</p> <p>15 committee heard on House Bill 218 in 2007. I wouldn't</p> <p>16 have any independent recollection of any of that.</p> <p>17 Q. (By Ms. Maranzano) Was House Bill 218 -- was</p> <p>18 part of the purpose of House Bill 218 to prevent</p> <p>19 non-citizens from voting?</p> <p>20 A. No.</p> <p>21 Q. Are you familiar with any statements that</p> <p>22 Representative Betty Brown made on the floor about House</p> <p>23 Bill 218?</p> <p>24 A. No.</p> <p>25 Q. Do you recall the Senate's consideration of House</p>	<p style="text-align: center;">88</p> <p>1 Q. And as you sit here today, do you have any</p> <p>2 recollection?</p> <p>3 A. I would not speculate.</p> <p>4 Q. So in 2006, is it fair to say that based on that</p> <p>5 interim report, the committee made no recollection --</p> <p>6 made no recommendation on photo ID laws?</p> <p>7 A. You're going to have to repeat that. I'm sorry.</p> <p>8 I didn't follow it.</p> <p>9 Q. In December 2006, we looked at the interim</p> <p>10 committee report, and is it fair to say the committee</p> <p>11 made no recommendation as to photo ID?</p> <p>12 MR. SWEETEN: You can refer to matters of</p> <p>13 the public record.</p> <p>14 A. I think the committee report is clear as to what</p> <p>15 it did and didn't do.</p> <p>16 Q. (By Ms. Maranzano) Well, let me ask you this.</p> <p>17 Is there anything in the public record that you can</p> <p>18 testify about today that would reflect a change between</p> <p>19 when you issued the report in December of 2006 and when</p> <p>20 you voted HB 218 out of committee?</p> <p>21 A. I can't answer that because I don't know and</p> <p>22 haven't looked at it.</p> <p>23 MR. SWEETEN: And I'll instruct you as to</p> <p>24 legislative privilege. Don't reveal your mental</p> <p>25 impressions.</p>

89

1 A. I do not want to run afoul or ignore the
 2 legislative privilege that I am asserted in this case.
 3 Q. (By Ms. Maranzano) Did each -- did HB 218
 4 require a two-thirds majority vote of senators to bring
 5 that bill to the floor of the Senate?
 6 A. The bill didn't require it.
 7 Q. Did the Senate rules require it?
 8 A. The Senate rules require bills to be brought up
 9 in the regular order of business.
 10 Q. And was House Bill 218 brought up in the regular
 11 order of business?
 12 A. No.
 13 Q. So in order to bring it up out of order, did it
 14 require a two-thirds vote?
 15 A. In 2007, to suspend the rules you had to have a
 16 two-thirds vote.
 17 Q. What's the purpose of that requirement, that you
 18 needed two-thirds vote to suspend the regular order of
 19 business?
 20 MR. SWEETEN: Are you saying in the 2007
 21 session, the two-thirds.
 22 MS. MARANZANO: I was asking more generally,
 23 actually.
 24 MR. SWEETEN: You can give the general
 25 purpose. Objection; vague. Because I don't think we're

90

1 talking about a specific rule. But you can give a
 2 general purpose to -- if you can understand what she's
 3 asking you about.
 4 BY MS. MARANZANO:
 5 Q. My question is about the requirement or the
 6 tradition in the Senate that when bills go out of order
 7 that it requires a two-thirds majority vote.
 8 A. There are 31 members of the Texas Senate. And
 9 there are 31 different general purposes of what that
 10 rule is all about. So I couldn't give you -- I couldn't
 11 speak for anybody else. And so the general purpose is
 12 obviously to require two-thirds vote to bring up a bill.
 13 But I can't tell you what the -- I don't know of any law
 14 reviews that discuss that or -- it has different
 15 meanings to different members of the Senate, if you're a
 16 rule member or what. It has different meetings.
 17 Q. Would it be fair to say that it's an effort to
 18 get the senators to reach some sort of consensus?
 19 MR. SWEETEN: You can provide and answer as
 20 to the general purpose of the bill. Don't discuss
 21 anything further than that or whatever rule she's
 22 referring to.
 23 A. Again, I would think that it's -- it has -- to
 24 different members it has different general -- there's
 25 different interpretations because it is a kind of a

91

1 blend of a rule and a tradition. And so to that end,
 2 there's not really a good answer that I can give
 3 speaking on behalf of the whole Senate as a general
 4 purpose.
 5 Q. Well, to be clear, I'm not interested in your
 6 subjective opinion about it. I'm just interested in
 7 your characterization of the legislative purpose.
 8 ATTORNEY2: Objection; asked and answered.
 9 BY MS. MARANZANO:
 10 Q. Do you have anything else to add?
 11 A. I probably don't.
 12 Q. Okay. Are most bills brought to the floor with a
 13 two-thirds vote?
 14 MR. SWEETEN: Answer as a general matter.
 15 A. In my experience, yes. But not all.
 16 Q. (By Ms. Maranzano) Can you tell me about the
 17 ones that went to the floor without a two-thirds vote?
 18 A. Well, over what period of time? I mean I've been
 19 in there 14 years.
 20 Q. Well, how many times -- I'm sorry. I didn't mean
 21 to interrupt your answer.
 22 A. A number of times.
 23 Q. Can you tell me how in the 14 years?
 24 A. No.
 25 Q. More than five?

92

1 A. Sure.
 2 Q. More than ten?
 3 A. Yeah.
 4 Q. More than 15?
 5 A. Yes.
 6 Q. More than 20?
 7 A. Your question is how many times have bills come
 8 to the Senate floor with a lack of -- with only 16 votes
 9 or without 21 votes.
 10 Q. Uh-huh.
 11 A. Multiple times. More than you've asked. I
 12 believe more than you have stated.
 13 Q. Okay. And I think I left off at 20. Would you
 14 say it's around -- can you just give me an approximate
 15 number?
 16 A. No, I really can't. Because I know -- generally
 17 I can't. The 21 vote rule is often debated. But again,
 18 you go back to Bullock, Hobby and other Lieutenant
 19 Governors. Either the rule has been -- there have been
 20 special orders or other measures to not apply the rule
 21 or that threat has been used. So it's an interesting
 22 part of Texas history. But it is -- again, there's no
 23 specific thing. It has been done a number of times,
 24 though.
 25 Q. Do you know what the partisan makeup of the

93

1 Senate was when the two-thirds rule was suspended under
 2 Lieutenant Governor Bullock?
 3 A. It was probably -- I believe -- the Republicans
 4 did not have a majority until December of '96. So I
 5 believe -- I don't believe that it was done in '97. So
 6 it would have been -- before that it probably would have
 7 been Democrat majority.
 8 Q. Do you know by how much?
 9 A. No.
 10 Q. How about under Lieutenant Governor Hobby?
 11 A. I don't believe the Republicans had a majority
 12 under Hobby.
 13 Q. Do you have any idea by what percentage or by
 14 what numbers they were in the minority?
 15 A. No. You would have to look -- it would be easy
 16 to determine.
 17 Q. Can you provide the circumstances under which
 18 House Bill 218 was voted on by the Senate?
 19 A. No. Is that the 2007 bill?
 20 Q. Yeah.
 21 A. What was your question?
 22 Q. The circumstances on which it was voted on in the
 23 Senate, do you recall anything about that vote?
 24 A. I don't understand the question. So, no, I
 25 can't.

94

1 Q. Okay. Well, let me ask you this. Do you recall
 2 it being voted on by the Senate?
 3 A. I recall there was a vote.
 4 Q. Who made the decision, if this is part of the
 5 public record, to bring this bill to the floor, to a
 6 vote of the Senate?
 7 MR. SWEETEN: When you're saying "bill," are
 8 we talking about --
 9 MS. MARANZANO: We're talking about House
 10 Bill 218.
 11 MR. SWEETEN: To the extent you're not
 12 revealing legislative privilege, you can answer it. But
 13 don't reveal matters of privilege, including
 14 communications you've had with others or mental
 15 impressions.
 16 A. I do not know who made the decision to bring the
 17 House Bill in 2007 to a vote.
 18 Q. (By Ms. Maranzano) Is that usually the
 19 Lieutenant Governor's decision?
 20 A. Generally the rules allow the Lieutenant Governor
 21 to set the calendar.
 22 Q. Do you know if any members of the Senate were not
 23 present when the vote was taken?
 24 A. I don't recall if there were members, you know,
 25 either present or on the floor or what. Members are

95

1 often on and off the floor or absent from time to time.
 2 There's an excused absence. There's just people not
 3 there. And so I don't know exactly what the record
 4 shows for that day.
 5 Q. And if somebody has an excused absence, votes are
 6 still taken; is that correct?
 7 A. Yes, as long as there's a quorum.
 8 Q. Are you aware of any conversations that Senator
 9 Uresti had with any members of the Senate about House
 10 Bill 218?
 11 A. No.
 12 Q. Were you aware in May of 2007, based on the
 13 public record, that there were concerns that House Bill
 14 218 would disproportionately impact minority voters?
 15 MR. SWEETEN: You can testify to matters on
 16 the public record. Don't testify as to communications
 17 you've had with others or to matter subject to
 18 privilege.
 19 A. To the extent those comments were made on either
 20 a debate on the Senate floor, which is what I understand
 21 the time frame you're talking about now, we're out of
 22 committee we're on the floor, is that the public record
 23 would reflect those concerns if they were raised.
 24 Q. But in May of 2007, were you aware of those
 25 concerns?

96

1 A. If I was on the Senate floor and I heard them on
 2 the -- as part of the public record, the public record
 3 is the public record.
 4 Q. Based on the public record, were any concerns
 5 expressed about taking a vote on House Bill 218 when
 6 some members weren't present?
 7 A. The record will reveal that.
 8 Q. Do you have any recollection about this
 9 occurring?
 10 A. If I do, it would be subject to the legislative
 11 privilege.
 12 Q. I'm just asking you about the public record?
 13 A. The public record is the public record. And that
 14 is -- if those statements were made on the public
 15 record, those statements were made on the public record
 16 and they speak for themselves. I'm sure Senator Ellis
 17 made a comment or somebody else. This is what the
 18 public record is.
 19 Q. Why are you sure Senator Ellis made a comment?
 20 A. Because he was active in this issue.
 21 Q. And what -- I guess I'm losing you. You're sure
 22 he made a comment because some members weren't present
 23 on the floor?
 24 A. No. On the public record, on the public issue of
 25 the debate on the bill. The issue -- the record will

97

1 reflect who and what was said.
 2 Q. Do you recall that in was a request made to
 3 verify the vote on House Bill 218?
 4 A. No. But there may have been.
 5 Q. Are you aware that Senator Uresti had called in
 6 sick that day?
 7 MR. SWEETEN: Don't reveal matters subject
 8 to legislative privilege in answering that question.
 9 You can refer to matter of public record.
 10 A. I'll refer to the record.
 11 Q. (By Ms. Maranzano) What's Senator Uresti's race?
 12 A. Well, I think Senator Uresti is Hispanic.
 13 Q. What part of Texas does he represent?
 14 A. He has a large district. It is similar to mine
 15 in that it -- it abuts the mine. It's in West Texas,
 16 far West Texas, but he also has some urban areas. And
 17 he, at that time, was representing part of El Paso as
 18 well.
 19 Q. Had he expressed concerns on the public record
 20 about the impact of House Bill 218 on his constituents?
 21 A. Public record will reflect what concerns, if any,
 22 he expressed.
 23 Q. Do you recall that House Bill 218 failed to
 24 obtain a two-thirds majority vote?
 25 A. It apparently did not pass that session.

98

1 Q. Do you know if there were any additional actions
 2 taken on House Bill 218 after it failed to obtain the
 3 two-thirds majority vote?
 4 MR. SWEETEN: You can answer based on the
 5 public record.
 6 A. I don't understand the question. It's not clear
 7 enough to me to respond accurately.
 8 Q. (By Ms. Maranzano) Was there any additional
 9 action taken on House Bill 218 after it failed to obtain
 10 a two-thirds majority vote?
 11 MR. SWEETEN: Again, you can refer to
 12 matters of the public record in answering the question.
 13 A. I don't recall based on the question.
 14 MS. MARANZANO: This has been previously
 15 marked as Exhibit 3.
 16 (Exhibit No. 3 was previously marked.)
 17 BY MS. MARANZANO:
 18 Q. Senator, I'm showing you what we're marking for
 19 the record as deposition Exhibit 3. And I would like to
 20 direct your attention to -- there's a letter that's
 21 issued from Lieutenant Governor David Dewhurst. Do you
 22 recall this letter? Let me state for the record, what
 23 I'm showing you is an article from the Texas Weekly.
 24 A. Let me have just a few minutes to read this.
 25 Q. Sure.

99

1 A. Okay.
 2 Q. Okay. Do you see that this includes a letter
 3 from the Lieutenant Governor related to House Bill 218?
 4 A. As reported in this media outlet.
 5 Q. And the letter that's printed in this media
 6 outlet asserts that the photo identification
 7 requirements will prevent voting by persons who are not
 8 US citizens, right?
 9 A. Where does it say that?
 10 MR. SWEETEN: Can you reread the question
 11 for me, please?
 12 (Requested question was read.)
 13 BY MS. MARANZANO:
 14 Q. And Senator, below the -- in the second letter,
 15 below that topic, "This is a letter from Lieutenant
 16 Governor David Dewhurst on voter ID." In the second
 17 paragraph, I just want to read you a sentence that says,
 18 "I want people to consider that with 8 to 12 million
 19 illegal aliens currently living in the US, the basic
 20 American principal of "one person, one vote" is in
 21 danger," correct?
 22 A. Well, that's what -- that's what that says.
 23 Q. Right. Do you believe that the Lieutenant
 24 Governor's letter is not asserting that photo ID
 25 requirements will prevent persons voting who are not US

100

1 citizens?
 2 MR. SWEETEN: Don't answer the question.
 3 Legislative privilege.
 4 MS. MARANZANO: I'm asking him about the
 5 letter.
 6 MR. SWEETEN: You can ask him about what
 7 this says. You can't ask him about his beliefs about
 8 legislation or about what he thinks about specific
 9 legislation. Those are his thoughts and mental
 10 impressions. If you're asking him if that's what it
 11 says, he's free to answer that.
 12 BY MS. MARANZANO:
 13 Q. I'm asking if the Lieutenant Governor made that
 14 assertion in this letter.
 15 A. I can't speak for the Lieutenant Governor on what
 16 he meant or intended or whether or not this is accurate.
 17 So I don't really have an opinion on that.
 18 Q. Let me ask you this. Is there anything in the
 19 public record that would support a contention that photo
 20 identification requirements prevent persons from voting
 21 who are not US citizens?
 22 MR. SWEETEN: Calls for matters of
 23 legislative privilege. You can refer to matters in the
 24 public record, but don't reveal your thoughts and mental
 25 impressions about any specific legislation.

<p style="text-align: center;">101</p> <p>1 A. You would have to refer to the legislative record</p> <p>2 to --</p> <p>3 Q. Anything you can add today?</p> <p>4 A. No, ma'am.</p> <p>5 Q. Do you see that in this letter -- I'm sorry. In</p> <p>6 this article there was a -- there are two letters from</p> <p>7 the Lieutenant Governor that are printed? There's a</p> <p>8 letter and then there's a corrected letter.</p> <p>9 A. This document which's a media report indicates</p> <p>10 that. I don't know about the authenticity of it?</p> <p>11 Q. You have no recollection of the?</p> <p>12 A. No, I don't subscribe to the Texas Weekly and did</p> <p>13 not review this. So this is the first time I've seen</p> <p>14 this document.</p> <p>15 Q. And apart from the letter -- apart from the</p> <p>16 article, do you recall ever seeing either of these</p> <p>17 letters from the Lieutenant Governor?</p> <p>18 MR. SWEETEN: You can answer.</p> <p>19 A. No, I don't. Let me correct, my staff may read</p> <p>20 this Texas Weekly, but I don't. I don't recall seeing</p> <p>21 this letter or -- I'm not even sure I recall hearing</p> <p>22 about it. It's been five years ago.</p> <p>23 Q. (By Ms. Maranzano) Is a voter registration</p> <p>24 applicant's citizenship status -- well, does a voter</p> <p>25 registration applicant affirm their citizenship status</p>	<p style="text-align: center;">103</p> <p>1 A. I don't recall or have any knowledge of that</p> <p>2 other than if -- I don't even know if there's anything</p> <p>3 on the public record on that.</p> <p>4 Q. (By Ms. Maranzano) Have you heard anyone in the</p> <p>5 legislature say there's a connection between photo ID</p> <p>6 bills and the growth of population? I'm not talking</p> <p>7 about private communications you may have had.</p> <p>8 MR. SWEETEN: You the can discuss matters of</p> <p>9 the public record.</p> <p>10 A. You would have to refer to the public record.</p> <p>11 Q. (By Ms. Maranzano) How about anyone in the</p> <p>12 governor's office, made such an assertion?</p> <p>13 MR. SWEETEN: Same instruction. Legislative</p> <p>14 privilege. But you can reveal matters of the public</p> <p>15 record.</p> <p>16 A. You would have to look -- refer to public record</p> <p>17 on that issue.</p> <p>18 Q. (By Ms. Maranzano) Are you familiar with a</p> <p>19 decision by the name of Crawford versus Marion County?</p> <p>20 MR. SWEETEN: Don't reveal your thoughts or</p> <p>21 mental impressions about legislation, your analysis or</p> <p>22 motivation in answering the question. You can reveal</p> <p>23 matters of the public record.</p> <p>24 A. When you say "familiar," I'm not sure what you</p> <p>25 mean by that. If that is the Georgia case, I think it</p>
<p style="text-align: center;">102</p> <p>1 on a voter registration application?</p> <p>2 MR. SWEETEN: Under present law?</p> <p>3 MS. MARANZANO: Under present law.</p> <p>4 MR. SWEETEN: You can answer the question if</p> <p>5 you know.</p> <p>6 A. I don't know. I would have to look at the law.</p> <p>7 Q. (By Ms. Maranzano) What ethnic group makes up</p> <p>8 the largest percentage of the immigrant population in</p> <p>9 Texas?</p> <p>10 A. I don't know for a fact. I think, generally, I</p> <p>11 believe that the Hispanic growth in Texas is well-known</p> <p>12 to be flourishing.</p> <p>13 Q. Based on public record, is there any connection</p> <p>14 between photo ID bills and the growth of non-citizen</p> <p>15 population in Texas?</p> <p>16 MR. SWEETEN: Don't answer her question. It</p> <p>17 calls for matters of legislative privilege. Instruct</p> <p>18 not to answer.</p> <p>19 BY MS. MARANZANO:</p> <p>20 Q. Have you heard an assertion that photo ID bills</p> <p>21 are connected to the growth of non-citizen population in</p> <p>22 Texas?</p> <p>23 MR. SWEETEN: You can answer based on</p> <p>24 matters of the public record. Don't make a legislative</p> <p>25 privilege.</p>	<p style="text-align: center;">104</p> <p>1 may be referred to in the public record. If that</p> <p>2 involves the Georgia voter ID.</p> <p>3 Q. The Crawford opinion, I believe was referred to</p> <p>4 in the public record. It's a Supreme Court decision</p> <p>5 about a law in Indiana. Does that refresh your</p> <p>6 recollection at all?</p> <p>7 A. Right. Right. It does.</p> <p>8 Q. Have you read that opinion?</p> <p>9 A. I have not analyzed it.</p> <p>10 Q. Have you read it?</p> <p>11 MR. SWEETEN: You don't have to say if</p> <p>12 you've read the decision or not. That would reveal your</p> <p>13 thoughts, mental impressions or processes and</p> <p>14 legislative privilege. Objective; legislative</p> <p>15 privilege. You can refer to matters in the public</p> <p>16 record.</p> <p>17 BY MS. MARANZANO:</p> <p>18 Q. I assume you can't answer the question?</p> <p>19 A. I think the public record would answer the</p> <p>20 question.</p> <p>21 Q. Did you or your staff have any communications</p> <p>22 with officials in Indiana regarding photo ID laws?</p> <p>23 MR. SWEETEN: You can answer the question.</p> <p>24 A. I did not. I do not know if my staff did or not.</p> <p>25 Q. (By Ms. Maranzano) Are you familiar with a photo</p>

105

1 identification bill that was introduced in the 2009
2 legislative session?

3 A. You're going to have to be more specific. There
4 are many bills.

5 Q. There were many photo identification bills?

6 A. I believe -- I assume there was. I do not know.
7 I just know that members file bills.

8 Q. All right.

9 A. There's nothing to prevent a member from filing a
10 bill.

11 Q. I was asking, just to be clear, I was asking
12 specifically about the photo identification bills?

13 A. Well, I'm familiar with one bill.

14 Q. Okay. Which bill is that?

15 A. It's the bill that was considered by the Senate
16 in 2009.

17 MS. MARANZANO: Can we mark this as 29?
18 (Exhibit No. 29 was previously marked.)

19 BY MS. MARANZANO:

20 Q. Are you referring to Senate Bill 362, Senator?

21 A. Yes, ma'am.

22 Q. I'm showing you what we're marking as deposition
23 Exhibit 29, previously marked exhibit. And can you look
24 at it and tell me if you recognize this document?

25 A. I assume this is the introduced version of Senate

106

1 Bill 362, but I don't know. You have given me -- this
2 doesn't necessarily reflect what -- what this is, other
3 than Senate Bill 362. Was it the original filed
4 version, were there changes. I don't recall what
5 version this is that you're referring to here.

6 Q. Okay. Is there a way, from looking at this bill,
7 that you could determine that?

8 A. No.

9 Q. I can represent to you that it is the engrossed
10 version. And if you will look at Section 10 of the
11 bill, which is on Page 5, do you see that list "forms of
12 identification"?

13 A. Yes.

14 Q. Do you see that Subsection B provides for some
15 forms of identification that don't have photographs on
16 them?

17 A. I believe it does.

18 Q. Do you believe that Senate Bill 362 follows House
19 Bill 218, for the most part?

20 A. I don't know. I haven't analyzed it.

21 Q. Well, just generally?

22 MR. SWEETEN: You can refer to the text of
23 the bill. Don't reveal your impressions.

24 A. I don't know, generally. It appears to me that
25 they're both bills that require -- relate to requiring a

107

1 voter to present proof of identification. And it seems
2 like both bills have photo ID or alternatives.

3 Q. Can you look at Section 10, for me? And, in
4 particular, Section 6 -- Subsection 6 of that, it says,
5 "A valid identification card that contains the person's
6 photograph and is issued by an agency or institution of
7 the federal government or an agency institution or
8 political subdivision of this State." Do you believe
9 that would include a State University?

10 A. I'm not sure what you're referring to, quite
11 frankly. So I'm a little slow on reading.

12 Q. Oh, yeah. I'm sorry.

13 A. Six is struck -- Subsection 6 is struck on my
14 bill.

15 Q. Well, I'm looking at the section that --

16 A. So it would be now, 7. I'm sorry, 6. I see.
17 Yeah. It would be U-6. And it refers to a "valid
18 identification card that contains the person's
19 photograph and is issued by an agency of the federal
20 government or an agencies institution or political
21 subdivision of the State." Is that what you're
22 referring?

23 Q. Uh-huh. Would that include identifications
24 issued by a State University?

25 MR. SWEETEN: You can testify based on the

108

1 text of the bill.

2 A. An institution of the State would -- may be a
3 little bit vague and ambiguous. But it's not -- one
4 could argue that it means a higher Ed institution.

5 Q. Were you involved in the development of Senate
6 Bill 362?

7 MR. SWEETEN: Objection; vague.

8 A. What do you mean by "development"?

9 Q. (By Ms. Maranzano) Were you involved in the
10 concept of creating this bill?

11 A. No.

12 Q. Were you involved in the drafting of this bill?

13 A. No.

14 Q. Was anybody in your staff?

15 A. I don't think so.

16 Q. Would you know if your staff had been involved in
17 the drafting of this bill?

18 A. Not necessarily. I usually would. From time to
19 time members would ask members of my staff issues on
20 questions about things. So I don't know. But that was
21 not our bill and we weren't sponsoring it. So it's
22 unlikely we were involved to any large degree in
23 developing the bill. Now, there may have been questions
24 that may have been answered. But I don't know what
25 those were.

109

1 Q. If questions had been asked would they likely
 2 have been directed to Jennifer Fagan?
 3 MR. SWEETEN: Objection; calls for
 4 speculation. You can answer. Objection; vague, too.
 5 A. Or the Committee staff, generally. Jennifer
 6 would direct the question or answer it.
 7 Q. (By Ms. Maranzano) How many staff work for the
 8 committee?
 9 A. I don't recall. It depends, five or six
 10 during -- during a session.
 11 Q. Did you have communications with Senator Fraser
 12 about Senate Bill 362?
 13 MR. SWEETEN: You can answer if you had
 14 communications.
 15 A. We did.
 16 Q. (By Ms. Maranzano) You did. How many?
 17 A. I can't tell you.
 18 Q. Can you give me an approximate number?
 19 A. No.
 20 Q. Can you tell me when those communications
 21 occurred?
 22 A. Between the time the bill was filed and between
 23 the time it was passed out of the Committee of the
 24 Whole.
 25 Q. Any communications before it was filed with

110

1 Senator Fraser?
 2 A. Probably.
 3 Q. And would those have been verbal communications
 4 or written?
 5 A. Yes, verbal.
 6 Q. Are you aware of the source of the legislative
 7 language in Senate Bill 362?
 8 MR. SWEETEN: Don't reveal matters of
 9 privilege.
 10 A. I'm not.
 11 Q. (By Ms. Maranzano) Are you aware of how this
 12 list of acceptable forms of identification was arrived
 13 at?
 14 MR. SWEETEN: Don't answer. Objection;
 15 legislative privilege.
 16 BY MS. MARANZANO:
 17 Q. Was there any discussion on the public record
 18 about these forms of identification and whether or not
 19 any additional forms of identification should be added
 20 to this bill?
 21 MR. SWEETEN: You can answer as phrased.
 22 A. I recall there was an a lot of discussion on the
 23 public record about a lot of things. And I would assume
 24 that some of these issues were discussed, but you would
 25 have to refer to the record, generally.

111

1 Q. (By Ms. Maranzano) You can't recall any?
 2 A. Not specifically.
 3 Q. Do you recall whether the legislature considered,
 4 based on the public record, adding additional forms of
 5 identification based on Senate Bill 362?
 6 MR. SWEETEN: Don't answer. It calls for
 7 mental impression, thoughts about legislation. It also
 8 would implicate other communications with other
 9 legislators so don't answer the question as phrased. If
 10 you interpret the word "consider" to mean was it
 11 discussed on the public record, that's fair game. But
 12 consideration gets into the privilege. Instruct not to
 13 answer on that basis. But with my instruction.
 14 BY MS. MARANZANO:
 15 Q. Let me ask you this. Were proposals made on the
 16 public record, such as amendments or other proposals to
 17 add additional forms of identification to Senate Bill
 18 362?
 19 MR. SWEETEN: You can answer as phrased.
 20 A. By "proposed," do you mean amendments.
 21 Q. (By Ms. Maranzano) Amendments or any other kind
 22 of proposals. I'm not of aware of anything other than
 23 amendments, but you may be.
 24 A. The record would reflect that if there were.
 25 Q. And what's your recollection?

112

1 A. You know, I vaguely remember that nobody offered
 2 amendments in 2009. But I may be wrong on that. The
 3 record would have to reflect that in the committee. Now
 4 I don't know about on the floor. If you're talking
 5 about the committee. But for some reason I recall there
 6 were no amendments offered. But I may be incorrect.
 7 The record would reflect that.
 8 Q. And how about on the floor?
 9 A. I don't recall that.
 10 Q. Were there discussions on the public record about
 11 how many registered voters did not possess one of the
 12 forms of identification listed in Senate Bill 362?
 13 MR. SWEETEN: You can answer.
 14 A. The record will reflect that clearly if there
 15 was. I'm not going to speculate on that.
 16 Q. (By Ms. Maranzano) What's your recollection, as
 17 you sit here today?
 18 A. I don't recall.
 19 Q. You don't recall that happening?
 20 A. Recall what happening?
 21 Q. Discussions about how many registered voters
 22 would not possess one of the forms of identification
 23 listed in Senate Bill 362?
 24 A. There were a lot of discussions over a period of
 25 time that I, you know, can't remember specifically if

113

1 there were discussions framed exactly as you have framed
2 it or generally as you have framed it. I believe there
3 were a number of discussions as the record will reflect
4 regarding issues similar to that, generally.

5 Q. Were there discussions on the public record about
6 doing an analysis to determine how many voters would
7 possess one of those forms of ID.

8 A. I don't recall whether there was or not. The
9 record would have to reflect that.

10 Q. If Senate Bill 362 had passed, would it have been
11 subject to the requirements of Section 5?

12 MR. SWEETEN: Don't reveal matters of
13 legislative privilege. You can answer if you would not
14 be doing that.

15 A. I believe as we discussed earlier, Texas is a
16 state that is subject to Section 5.

17 Q. (By Ms. Maranzano) Is that a "yes" or "no"?

18 A. Well, if you or subject to Section 5 and it
19 changes the vote procedure, I would assume it would
20 require preclearance.

21 Q. Did the legislature take the position that after
22 Crawford was covered by Section 5 of the Voting Rights
23 Act, did not meet the analysis of the impact of photo --
24 photo identification laws on minority voters?

25 MR. SWEETEN: In answering the question,

114

1 don't reveal matters of legislative privilege. Also
2 objection to the question as vague.

3 A. I can't speak for the legislature.

4 Q. (By Ms. Maranzano) Was there any position, such
5 as that taken on the public record?

6 A. I don't know.

7 Q. What was the purpose of Senate Bill 362?

8 MR. SWEETEN: You can answer the general
9 purpose.

10 A. The general purpose is to preserve ballot
11 integrity.

12 Q. (By Ms. Maranzano) Was this law designed to
13 correct any specific problem?

14 MR. SWEETEN: Don't answer the question. It
15 calls for matters of legislative privilege. Instruct
16 not to answer.

17 BY MS. MARANZANO:

18 Q. Was there anything on the public record that
19 would suggest that that law was designed to address any
20 specific problem with regard to the ballot integrity?

21 MR. SWEETEN: Don't reveal your thoughts and
22 mental impressions. You can refer to factual matters on
23 the public record in answering the question. Don't
24 reveal your analysis.

25 A. You would just have to look at the record to

115

1 determine that.

2 Q. (By Ms. Maranzano) So you have no independent
3 recollection of whether there was discussion of any
4 particular problems that Senate Bill 362 was designed to
5 correct within the realm of voter integrity as you
6 described the purpose?

7 A. I believe the public record is clear on what was
8 discussed along those lines and that would be the best
9 source, what the public record contains.

10 Q. But your -- I mean, I'm just trying to
11 understand --

12 A. Other than my recollection, which would be
13 analysis and mental process. So what I'm trying to say
14 is simply, that was three years ago. And the record is
15 created to preserve what was said. And that would be
16 the best evidence of what was said regarding those
17 things, not my recollection, which is basically a mental
18 impression.

19 Q. Well, your recollection of the public record is
20 what I'm asking you about?

21 A. Public record?

22 Q. Not your impressions of the public record?

23 A. Well, the public record is the public record,
24 period. It is the record.

25 Q. Yes. But you're being deposed today so I can get

116

1 your knowledge. So that's what I'm asking you to
2 explain to me. Things that happened on the public
3 record. So let me ask you this.

4 MR. SWEETEN: I just want to -- he can --
5 and I just want to be clear. He can say whether he
6 recalls it being addressed in the public record. So I
7 will let him do that. Obviously, to the extent you're
8 asking for mental impressions or thought processes about
9 the bill, that's legislative privilege. But he can say
10 if he recalls. And I think, for the most part, he says
11 he doesn't recall. So I just want to make sure my
12 instruction is clear on that point.

13 BY MS. MARANZANO:

14 Q. Was there -- was any part of the purpose of
15 Senate Bill 362 to prevent non-citizens from voting?

16 A. No.

17 Q. Based on the public record, was there any
18 evidence that Senate Bill 362 would be more effective at
19 preventing in person voter impersonation than the
20 current system?

21 MR. SWEETEN: You're now asking him for his
22 qualitative analysis of what was on the record, which
23 would require him to reveal his mental impression,
24 thoughts that would be subject to the legislative
25 privilege so I'm instructing you not to answer on that

117

1 basis.
 2 BY MS. MARANZANO:
 3 Q. Was there any factual analysis on the public
 4 record that compared Senate Bill 362 to the current
 5 system, in terms of the purported goals of the bill?
 6 MR. SWEETEN: You can answer based on the
 7 public record if there was factual analysis.
 8 A. I don't -- I don't -- I don't understand the
 9 question. Could you repeat it again?
 10 Q. (By Ms. Maranzano) Sure. Was there factual
 11 analysis in the public record about Senate Bill 362, the
 12 regime that Senate Bill 362 had set up and the current
 13 system and each of their -- and the goal of
 14 Senate Bill 362 to prevent in person voter
 15 impersonation?
 16 MR. SWEETEN: Objection; compound. Same
 17 instruction on legislative privilege. You can refer to
 18 matters of the public record.
 19 A. I think you can refer to the public record. It
 20 would reflect that my memory is a little vague, what
 21 you're asking. But if I understand you correctly, the
 22 record would reflect those sorts of things, what was
 23 discussed and what was put in the record as far as
 24 written testimony, oral testimony, debate between the
 25 members and those sorts of things would be covered, I

118

1 think, in a very extensive record on this issue.
 2 Q. (By Ms. Maranzano) And you have no independent
 3 recollection, as you sit here today?
 4 A. It would be -- if I have independent recollection
 5 it would be recollection that would be subject to my
 6 mental processes and judgment as a legislator. And I
 7 would not be accurate -- it would be somewhat
 8 speculative on my part to try to go back three years and
 9 remember what people said without putting my judgment in
 10 there as to what it meant. The record is very clear
 11 about what people said and what the debates were. And
 12 that's why the record was created. And so that's the
 13 best evidence, in my view, of what the legislature did
 14 in 2009.
 15 Q. Did you have any communications with legislators
 16 who opposed Senate Bill 362?
 17 MR. SWEETEN: You can answer.
 18 A. Yes.
 19 Q. (By Ms. Maranzano) With whom?
 20 A. Well, Senator Ellis, Senator Lucio, Senator
 21 Whitmire, Senator Van de Putte, and probably others.
 22 Q. How many conversations?
 23 A. Senator Gallegos.
 24 Q. Sorry. Anybody else?
 25 A. You know, probably, but I remember those folks

119

1 typically, I communicated with quite a bit.
 2 Q. How many conversations did you have with Senator
 3 Ellis about Senate Bill 362?
 4 A. There's no way to tell you how many.
 5 Q. Do you know when they occurred?
 6 A. No.
 7 Q. Can you tell me --
 8 A. During the process.
 9 Q. Can you tell me, generally, what the subject
 10 matter of those conversations were?
 11 A. No, I really don't recall, generally. I mean,
 12 Senator Ellis was opposed to the bill and Senator Ellis
 13 expressed that opinion several times.
 14 Q. Can you tell me how in conversations you had with
 15 Senator Lucio about Senate Bill 362?
 16 A. No.
 17 Q. Can you tell me when they occurred?
 18 A. No.
 19 Q. The general nature of those conversations?
 20 MR. SWEETEN: Well, you've already asked him
 21 was it about this bill so I think that is the general
 22 subject matter.
 23 MS. MARANZANO: You're not going to let him
 24 testify to anything more specifically?
 25 MR. SWEETEN: Well, I'm not going to let him

120

1 reveal the substance of the communication. I think he
 2 said opponents about the bill. That would be a
 3 privileged log description.
 4 MS. MARANZANO: That seems extremely general
 5 to me.
 6 MR. SWEETEN: Well, what do you
 7 specifically -- I mean, if you can find a middle ground
 8 I will work with you Jennifer.
 9 MS. MARANZANO: It's hard for me to find a
 10 middle ground when I don't know what the subject matter
 11 is.
 12 MR. SWEETEN: Well, if you can recall the
 13 specific communication she's referring to, I will allow
 14 you to give a general subject matter description with
 15 the opponents. Does that satisfy you?
 16 MS. MARANZANO: It does, thank you.
 17 A. ID not recall a specific conversation other than
 18 what -- there are thousands of bills. And as chairman
 19 of committee, I communicate with members on all of those
 20 bills. And for me to come and try to reconstruct a
 21 specific conversation that occurred three years ago
 22 would be impossible, to accurately construct it. And so
 23 I can't give you an accurate answer to your question
 24 without violating the privilege and without going into
 25 mental processes and opinion.

121

1 Q. (By Ms. Maranzano) And would that hold true for
 2 each of these members that you've identified?
 3 A. I believe it would.
 4 Q. Did these members explain to you why they were
 5 opposing the bill?
 6 MR. SWEETEN: Objection; compound.
 7 A. Common sense would tell you that some more than
 8 others, yes.
 9 MR. SWEETEN: Don't reveal anymore than the
 10 general subject matter description why they opposed the
 11 bill. You can just answer it.
 12 BY MS. MARANZANO:
 13 Q. Why do you say some more than others?
 14 A. Some were more vocal about their opposition than
 15 others. Some sit closer to me on the floor than others
 16 too. And some members I'm closer to than others. Just
 17 depends on who it is and what's happening on the day.
 18 Q. Do you remember if any of them specifically told
 19 you why they opposed the bill?
 20 MR. SWEETEN: You can answer "yes" or "no"
 21 on that question. Don't reveal the communication
 22 itself.
 23 A. Yes.
 24 Q. (By Ms. Maranzano) Which ones?
 25 A. I'm sure it would have been Senator Ellis,

122

1 Senator Whitmire, Senator Van de Putte, perhaps Senator
 2 Lucio.
 3 Q. I'm sorry, did you say perhaps?
 4 A. Well, not Lucio. It would be those three.
 5 Probably those three. Because of the committee and
 6 other issues.
 7 Q. Did you have communications with outside groups
 8 about Senate Bill 362?
 9 A. Again, to the extent that they appeared before
 10 the committee. But not to any other extent.
 11 Q. Did you have communications with the executive
 12 branch about Senate Bill 362?
 13 A. You know, I don't really recall doing that. If
 14 it was, it might have been some staff member on
 15 logistics of when. But not on any substantive matter.
 16 Q. Did you have conversations with or other
 17 communications with locally elected officials on Senate
 18 Bill 362?
 19 A. To the extent they appeared before the committee
 20 and gave public testimony or submitted record --
 21 testimony or evidence in the record, yes.
 22 Q. Anything -- any conversations apart from their
 23 testimony?
 24 A. Not that I recall.
 25 Q. Were concerns raised on the public record about

123

1 the impact of Senate Bill 362 on minority voters?
 2 A. You would have to refer to the public record.
 3 Q. Did the legislature take any steps on the public
 4 record to address those concerns?
 5 A. The record would reflect that.
 6 Q. And you have no independent recollection?
 7 A. Not as you have framed the question, no.
 8 Q. Well, do you have a different recollection?
 9 MR. SWEETEN: Don't provide thought, mental
 10 impressions about the bill or discussions that you've
 11 had with other legislators in answering the question.
 12 A. The only way I can answer the question accurately
 13 is to say that there was discussion on the public record
 14 about all of these issues. And there was testimony
 15 given by experts on all of these issues. And there was
 16 testimony given by lay witnesses on all of these issues.
 17 And all that is reflected in the record. And my
 18 independent recollection of any of that would be
 19 inaccurate. But if you refer to the record, the record
 20 would be an accurate depiction of what was considered by
 21 the committee, debated by the committee and what was
 22 before the Committee of the Whole when it made the
 23 decision to vote, based on the record.
 24 Q. (By Ms. Maranzano) So my question is, do you
 25 have a recollection, based on what happened on the

124

1 public record, about whether the legislature took any
 2 steps to address the concerns raised about the impact of
 3 Senate Bill 362 on minority voters?
 4 MR. SWEETEN: Objection; legislative
 5 privilege. You're asking about what steps they took and
 6 that's asking for his mental impressions and thoughts
 7 and opinions about the legislation that would be subject
 8 to the legislative privilege, as phrased.
 9 MS. MARANZANO: But steps that they took --
 10 let me clarify.
 11 MR. SWEETEN: You're asking him to
 12 characterize steps they took in the context of
 13 information which is clearly an analysis and process
 14 question.
 15 MS. MARANZANO: All right. I got you.
 16 BY MS. MARANZANO:
 17 Q. Let me ask you this. Was there anything stated
 18 on the public record that a step was being taken where
 19 it was publicly stated that this step was being taken to
 20 address concerns about the potential impact of Senate
 21 Bill 362 on minority voters?
 22 MR. SWEETEN: As narrowed, in referencing
 23 the public record, to the extent you can recall, you can
 24 answer the question.
 25 A. The public record is several thousand page.

125

1 Q. (By Ms. Maranzano) Well, what's your
2 recollection?

3 A. I don't -- I don't have a specific recollection
4 of what was done. I would have to refer to the record.

5 Q. Did you have a role in attempting to secure
6 passage of Senate Bill 362?

7 MR. SWEETEN: Hold on a minute. Object on
8 the basis of legislative privilege. Any role he had to
9 implicate his analysis and thoughts about the bill or
10 communications that he had. To the extent you can refer
11 to matters of the public record, you can answer that
12 question.

13 A. My role was as chairman of the Committee of the
14 Whole, with regard to the process of hearing the bill
15 and presenting it to the members.

16 MR. SWEETEN: Okay. I think we're getting
17 close to a break. That bowl of Captain Crunch I had at
18 5 a.m. is not lasting. So can we get to a point and
19 take a break pretty soon?

20 MS. MARANZANO: Yes. Why don't we just go
21 ahead and do that.

22 MR. SWEETEN: I would like a time check now.
23 Please.

24 MS. MARANZANO: Let's go back on the record.
25 And can we mark this?

126

1 (Exhibit No. 524 was marked.)

2 BY MS. MARANZANO:

3 Q. Before the break we were talking about Senate
4 Bill 362. I'm actually going to go back for a moment to
5 House Bill 218. I'm giving you what we're marking as
6 deposition Exhibit 524. If you could take a look at
7 that and tell me if you recognize it.

8 A. It appears to be a record of the Senate Committee
9 on State Affairs, dated April 30, 2007. House Bill 218
10 is the title.

11 Q. Can you look at the page that's Bates labeled at
12 the bottom -- or actually it's Page No. 54 in the
13 record.

14 A. 54 of the transcript.

15 Q. Of the transcript. And the Bates label is Texas
16 00213319. There's a statement made by you on that page.
17 Do you see that?

18 A. Does that appear at line 14.

19 Q. Line 14, exactly. And if you can look down a few
20 lines from that there's a sentence that says, "One thing
21 I think, Senator Fraser laid out a good argument in the
22 beginning and he says that, 'Well, if one voter votes
23 illegally or fraudulently, cancels out the vote of a
24 person who voted legally.'" Does that seem like an
25 accurate representation of something you said, to the

127

1 extent you remember?

2 A. Well, again as we discussed earlier I don't
3 remember specific things that were said or what I said.
4 But if that's what the record says I said then I'm sure
5 that's what I said.

6 Q. Has anyone ever told you that they're not going
7 to vote because they're worried about somebody voting
8 illegally and cancelling out their vote?

9 MR. SWEETEN: Don't reveal matters of
10 privilege in answering the question.

11 A. Not specifically.

12 Q. (By Ms. Maranzano) Not -- not specifically. Has
13 anybody ever told you generally?

14 A. Well, generally no. I mean, as far as you hear
15 people discussing, the general public about voter ID and
16 what's wrong with voter ID, people may make statements
17 generally about voter confidence. But I can't recall a
18 specific statement anybody said.

19 Q. And what kinds of statements about voter
20 confidence do you recall?

21 MR. SWEETEN: Don't reveal matters that
22 would be subject to the legislative privilege.
23 Communications with the legislative staff, State
24 agencies, Texas Legislative Council. And don't reveal
25 your thoughts or mental impression.

128

1 A. Just generally, what you would read in the
2 newspaper or what you would hear on the radio talk show
3 or what you would hear on a general discussion of the
4 people at meetings and things like that about,
5 generally, voter confidence, voter ID and that sort of
6 thing.

7 Q. Okay. And I'm just trying to understand, what do
8 you mean by "voter confidence and voter ID." What have
9 you heard in those forums that you just listed about the
10 connection between voter confidence and voter ID?

11 A. Generally, what I would recall is that there is a
12 frustration while somebody should not be allowed --
13 should not be required to show an ID to vote when
14 they're shown an ID to do a lot of other things that we
15 all do in this society in this day and age.

16 Q. Have you also heard that, in those same forums,
17 that some of those things we have to show ID for are not
18 legal rights?

19 MR. SWEETEN: You can answer. Don't reveal
20 your mental thoughts and impressions and don't reveal
21 the communications that would be subject to the
22 legislative privilege. You can refer to matters in the
23 public record, which I think you have.

24 A. I don't recall anything specific as to what you
25 described.

133

1 that. This statement is what it is. It is a statement
2 that basically is a form of public debate on the issue.
3 So that's what I recall. And that is how I can answer
4 that.
5 Q. Okay. You're not able to provide any additional
6 answer as to what you meant -- what the word that refers
7 to? I mean I was just actually just asking for the
8 context?

9 A. You know, I don't remember making -- this is the
10 record -- I don't recall this specific conversation.
11 I'm not denying that it occurred. I'm just saying I
12 don't recall the conversation. So I actually
13 don't understand -- can't -- or don't recall -- I cannot
14 accurately answer what context that's in.

15 Q. So would it be oppressive if a person was unable
16 to afford an identification and couldn't vote, would
17 that system be oppressive?

18 MR. SWEETEN: Objection. Don't answer.
19 Calls for matters subject to the legislative privilege.
20 BY MS. MARANZANO:

21 Q. Can you look at the next page for me, on Page 57
22 of the public record, the public hearing. And at the
23 bottom of that page do you see there's a quote by you?

24 A. Well, I have testimony beginning on line 14.

25 Q. Yes. Can you look at where that -- can you look

134

1 at the testimony that's at line 24 and 25 and the top of
2 the one on the next page. Do you see that it says, "So
3 what this is, this is the least restrictive more to be
4 able to verify voters. It seems to me." Based on the
5 public record, do you think House Bill 218 is the least
6 restrictive means to verify voters?

7 MR. SWEETEN: Objection. Don't answer the
8 question. It calls for matters of legislative
9 privilege, including your mental impressions, thoughts,
10 motivations about bills.

11 BY MS. MARANZANO:

12 Q. Was there discussion on the public record about
13 whether House Bill 218 was the least restrictive means
14 to verify voters?

15 MR. SWEETEN: You can answer the question.

16 A. It appears that there was discussion and debate
17 about that and the record will speak for that.

18 Q. (By Ms. Maranzano) Was there any discussion on
19 the public record about whether House Bill 218 would
20 continue to be the least restrictive means to verify
21 voters if some of the forms of identification in the
22 bill were removed from it?

23 A. If there was such a discussion of that it would
24 be in the record.

25 Q. Do you have any recollection of that, as you sit

135

1 here today?

2 A. Not in the record. Are you talking just about
3 this Senate Committee public hearing or are you talking
4 about 218, generally?

5 Q. I'm talking about the public record, generally?

6 A. Okay.

7 Q. Does that change your answer at all?

8 A. No.

9 Q. Okay. Can you look at Page 99 of the transcript,
10 the Bates label is Texas 00213364. And there's an
11 exchange -- I'm sorry. Do you see there's an exchange
12 at the bottom of the page between Senator Van de Putte
13 and Ms. McGeehan. Can you identify for the record who
14 Ms. McGeehan is?

15 A. I believe that would be referring to Ann McGeehan
16 who was an employee of the Secretary of State's office.
17 I'm think in the election division.

18 Q. Was she the director of elections?

19 A. I think that was generally her title. It I'm not
20 sure specifically what her title was.

21 Q. Do you see on line 22, Senator Van de Putte
22 asked, "About how many complaints have you about had
23 voter impersonation?" And Ms. McGahan responds on line
24 24, "We have not had any."

25 A. I see that.

136

1 Q. Do you recall that exchange?

2 A. Not specifically. But I recall it from reviewing
3 the record here.

4 Q. Do you recall at any point publicly getting an
5 update on that information sometime between when this
6 happened and the 2011 legislative session?

7 MR. SWEETEN: You can refer to matters in
8 the public record.

9 A. I don't recall if we did or not. If we did it's
10 reflected either in -- or it should be reflected in the
11 committee records post April 30, 2007.

12 Q. Would that information, if it was publicly made
13 available, have gone to the State Affairs Committee?

14 MR. SWEETEN: Objection. Calls for
15 speculation. Also don't reveal your mental processes or
16 communications.

17 A. It could have gone to the State Affairs
18 Committee. It could have gone to members generally.
19 Sometimes post-hearing or once a bill is out of the
20 COMMITTEE people will disseminate things. I don't know.
21 But I can't tell you outside the record whether the
22 committee followed up or did anymore in that session on
23 that question.

24 Q. (By Ms. Maranzano) Okay. We can put this aside.
25 Before the break we had started talking about Senate

137

1 Bill 362. Do you recall that?
 2 MS. MARANZANO: Can we have this marked.
 3 (Exhibit No. 525 was marked.)
 4 BY MS. MARANZANO:
 5 Q. Senator, I'm showing you what we're marking for
 6 the record as deposition Exhibit 525. It does not have
 7 a cover page on this, but do you recognize that this
 8 looks to be an excerpt from the Senate rules?
 9 MR. SWEETEN: Is this '09 or '11, did you
 10 say.
 11 MS. MARANZANO: This is '09.
 12 MR. SWEETEN: '09, okay.
 13 A. Is your question does this appear to be?
 14 Q. (By Ms. Maranzano) An excerpt from the Senate
 15 rules?
 16 A. I assume that it is.
 17 Q. Do you recall -- do you recall having a debate on
 18 the rules resolution in 2009 in the Senate?
 19 A. I do recall there was a debate on this.
 20 Q. And can you direct your attention to Section D of
 21 Rule 5.11?
 22 A. Yes, ma'am.
 23 Q. Do you see that there's a provision explicitly
 24 for voter identification requirements in Section D of
 25 Rule 5.11?

138

1 A. Uh-huh. Yes, ma'am.
 2 Q. Can you tell me what the circumstances were for
 3 adopting that rule, that section of the rules?
 4 MR. SWEETEN: Done reveal -- don't answer
 5 the question as phrased. It will require you to reveal
 6 matters subject to legislative privilege. You can
 7 answer as to the general purpose of Rule 5.11. I will
 8 let him do that.
 9 BY MS. MARANZANO:
 10 Q. Why don't you tell me about the general purpose
 11 of Rule 5.11?
 12 A. Well, as I understand the general purpose of Rule
 13 5.11 was to be able to take up consider -- a bill of
 14 resolution relating to voter identification
 15 requirements, within the confines of this rule. And it
 16 sets up the process and procedure of doing that.
 17 Q. And what was the purpose for making this special
 18 carve-out for voter identification requirements?
 19 MR. SWEETEN: You can testify to the purpose
 20 of rule 5.11 generally.
 21 A. Well, generally, the purpose is to allow a bill
 22 to be brought up as a special order as opposed to the
 23 regular order of business.
 24 Q. (By Ms. Maranzano) So what I'm directing your
 25 attention to is the Subsection D of that rule. What was

139

1 the purpose of subsection D?
 2 A. The purpose of that subsection is to provide for
 3 consideration of voter identification or a bill of
 4 resolution relating to voter identification requirements
 5 by a Committee of the Whole in setting the time limit.
 6 Q. And so -- I'm sorry. Were you done?
 7 A. I think so.
 8 Q. Do you see that that also allows for a vote by
 9 the majority of the members of the Senate?
 10 A. That's correct.
 11 Q. And so that -- was this in the 2007 Senate rules?
 12 A. I think this rule was either added or amended in
 13 2009.
 14 Q. So you believe it was or was not in the 2007
 15 rules?
 16 A. Not as 5.11. I don't know what was -- if there
 17 was a version of special order bill that was amended by
 18 the Senate on -- in January of 2009.
 19 Q. Okay. But I'm asking specifically about
 20 Subsection D?
 21 MR. SWEETEN: You're asking was D in the
 22 2007 Senate rules.
 23 MS. MARANZANO: Yeah.
 24 MR. SWEETEN: You can answer.
 25 A. I don't think so.

140

1 Q. (By Ms. Maranzano) Okay. How about the 2005
 2 Senate rules?
 3 A. I don't believe it was.
 4 Q. Are you aware of any other times when there has
 5 been a carve-out for one particular type of legislation
 6 written into the Senate rules?
 7 MR. SWEETEN: You're talking about in -- in
 8 the context of the 5.11. Because I think the question
 9 could be very broad. I just want to make sure I
 10 understand.
 11 BY MS. MARANZANO:
 12 Q. Okay. Why don't we focus on 5.11. Was there any
 13 other time that you're aware of when there has been an
 14 exception written into the rules for Rule 5.11 about one
 15 particular type of legislation?
 16 A. Not that I recall. Not that I know of.
 17 Q. Did Senate Bill 362 pass by more than two-thirds
 18 a majority vote?
 19 A. I think the record would reflect it passed by a
 20 majority, but not a two-thirds majority.
 21 Q. Did you have any communication -- well, let me
 22 ask you this. Did Senator Williams introduce the
 23 resolution to the Senate rules resolution in 2009?
 24 A. I believe Senator Williams was the primary author
 25 of the rule, of the proposed rule, yes.

141

1 Q. Did you have communications with Senator
2 Williams?
3 A. Yes.
4 Q. About the proposed rules?
5 A. Yes.
6 Q. How many?
7 A. I don't know. Not many.
8 Q. Prior to his introduction of the resolution?
9 A. Yes, prior.
10 Q. Can you give me an approximate number?
11 A. Not really. I mean it was -- I really can't. It
12 would be an approximate guess, so I hate to guess. We
13 had more than one.
14 Q. More than five?
15 A. Probably.
16 Q. And they were all prior to the introduction of
17 the resolution?
18 A. No. Well, I don't know. Prior to passage. I'll
19 qualify it that way.
20 Q. When did you learn that Senator Williams was
21 going to introduce the rules resolution that included
22 this Subsection D for Rule 5.11?
23 A. Sometime in January of 2009.
24 Q. Did any other Senate rules get changed from the
25 consideration of voter identification requirements in

142

1 2009?
2 MR. SWEETEN: Could you read the question
3 back, please, madam court reporter.
4 (Requested question was read.)
5 MS. MARANZANO: And I think what I intended
6 to say was for the identification of voter
7 identification requirements.
8 A. Would you just rephrase it?
9 Q. (By Ms. Maranzano) Were any other Senate rules
10 changed in 2009 solely for -- as is written in 5.11-D,
11 solely for a bill or resolution related to voter
12 identification requirements?
13 A. I don't know if there were any conforming rules
14 or anything that were changed as a result of this. I do
15 not know the answer to this question.
16 Q. Other than conforming rules, did anything change?
17 A. I don't think so. But again, I don't know for
18 sure. I don't recall that there were. I don't think
19 there were.
20 Q. Did you take a public position on the rules
21 resolution that Senator Williams introduced?
22 A. What do you mean?
23 Q. Presumably, you voted on it, right?
24 A. I voted for it.
25 Q. You voted for it?

143

1 A. Yes. Yes.
2 Q. Did you have any communications with anybody
3 about changing other rules in 2009 for the consideration
4 of voter identification requirements, other rules other
5 than the 5.11?
6 A. I don't think so.
7 Q. And other than Senator Williams, did you have any
8 communications about Subsection D of 5.11 with anybody
9 in 2009?
10 A. I had conversations with several members of the
11 Senate over that. During the debate on the floor,
12 during the few days before when it was proposed and
13 voted on. Just part of what we do in the Senate is
14 there are discussions formal and informal. Formal would
15 be on the record, informal would be discussions that
16 would be had on the Senate floor.
17 Q. Who did you have informal communications with?
18 A. I would assume members of the -- different
19 members.
20 Q. Can you give me their names?
21 A. Well, Senator Lucio, Senator Ellis, Senator Van
22 de Putte, Senator Whitmire, probably Senator Fraser,
23 probably Senator Williams, probably Senator Ogden,
24 Probably Carona, Senator Eltife perhaps. Those are just
25 specific people that are coming to my mind that I would

144

1 have had a discussion on the Senate floor about this
2 particular rule.
3 Q. Do you remember conversations with them or you're
4 just saying if you --
5 A. I don't remember the context of generally what
6 members of the legislative body do in discussing an
7 issue.
8 Q. And am I correct that some of the members you
9 listed voted against the rules resolution?
10 A. That's correct.
11 Q. Were your conversations -- did your conversations
12 with them include -- include discussing the reasons why
13 they were voting against the rules resolution?
14 MR. SWEETEN: Don't discuss the specific
15 conversations. But if you want to -- I think as phrased
16 I'm going to let you answer it.
17 A. Members discuss their mental processes and
18 thoughts about bills on the Senate floor all the time
19 that may not be on the record. In other words, it's --
20 as opposed to a formal debate where somebody is holding
21 a mic and debating formally or whether somebody is
22 working on a bill and debating the bill on the Senate
23 floor informally without a debate. It is part of the
24 mental process sharing of legislators that occurs. And
25 that would be the type of communication that we were

145

1 having.
 2 Q. (By Ms. Maranzano) So my question was about
 3 whether they expressed why they were opposed to the
 4 bill's resolution.
 5 A. I'm sure those that did expressed or gave reasons
 6 as to why they were opposed.
 7 Q. Do you recall if Senator Carona gave you reasons
 8 about why he was opposed to the rules resolution?
 9 A. Yes.
 10 Q. How many conversations did you have with him?
 11 A. Two or three.
 12 Q. Were all of these conversations that you've
 13 referred to, and for the purposes of this question I'm
 14 including more than just Senator Carona, were they all
 15 verbal?
 16 A. Yes.
 17 Q. Did you have any written communications?
 18 A. No.
 19 Q. Did Senate Bill 362 go to any Senate committees?
 20 THE REPORTER: Go what?
 21 MS. MARANZANO: Was it referred to any
 22 Senate committees?
 23 A. I don't believe it was, other than the Committee
 24 of the Whole. I don't believe it went to a specific
 25 standing committee.

146

1 Q. (By Ms. Maranzano) Is that the -- is that
 2 unusual?
 3 MR. SWEETEN: You can answer as the general
 4 Senate procedure.
 5 A. That was the procedure that was established by
 6 Rule 5.11.
 7 Q. (By Ms. Maranzano) Rule 5.11 established that it
 8 would go straight to the Committee of the Whole?
 9 A. I believe that's what it says. I'll look at it.
 10 I believe that the Senate Rule 5.11 contemplates the
 11 bill being referred to by the Senate of the whole.
 12 Q. Would this bill, had it not been referred to the
 13 Committee of the Whole, been referred to the State
 14 Affairs Committee? The bill I'm referring to is Senate
 15 Bill 362.
 16 MR. SWEETEN: Hold on a minute. Calls for
 17 speculation and calls for him to reveal his thoughts,
 18 mental impressions about legislation. So I'm going to
 19 instruct you not to answer based on that.
 20 BY MS. MARANZANO:
 21 Q. Did you have any communications with the
 22 Lieutenant Governor about the referral of Senate Bill
 23 362 straight to the Committee of the Whole?
 24 A. Yes.
 25 Q. How many?

147

1 A. I can't tell you. Five or more.
 2 Q. And when were those?
 3 A. From the point of -- it would after the rule was
 4 adopted and from the time we had the hearing.
 5 Q. I'm sorry. The time that the Committee of the
 6 Whole held the hearing?
 7 A. Right. Right.
 8 Q. It was after the rule was adopted you said?
 9 A. Yes. I may have had some conversations before,
 10 generally. I just don't recall.
 11 Q. What was the purpose of referring the bill
 12 directly to the Committee of the Whole?
 13 MR. SWEETEN: Yeah. Don't answer that
 14 question. That calls for matters that are your mental
 15 impressions, thoughts, opinions about legislation,
 16 motivations, so don't answer the question.
 17 BY MS. MARANZANO:
 18 Q. Were there any conversations on the public record
 19 about the referral of this bill straight to the
 20 Committee of the Whole?
 21 MR. SWEETEN: You can answer the question as
 22 phrased.
 23 A. If they there were they're on the record. I
 24 assume there may have been discussions about that during
 25 the debate on Rule 5.11.

148

1 Q. (By Ms. Maranzano) Do you recall any members
 2 expressing concern that this bill was trying to be moved
 3 along extremely quickly?
 4 MR. SWEETEN: You can refer to matters of
 5 the public record. Don't reveal matters of legislative
 6 privilege.
 7 A. I don't know for sure. I don't recall -- have
 8 independent recall. That would be reflected in the
 9 record. It's not unusual for that to occur.
 10 Q. (By Ms. Maranzano) I'm sorry. For what to --
 11 what's not unusual?
 12 A. For someone to complain that the bill is moving
 13 too quickly.
 14 Q. I see. Based on the public record would you say
 15 Senate Bill 362 moved fairly quickly through the
 16 legislature compared to other bills?
 17 A. No.
 18 Q. Did you have less of an ability to shape Senate
 19 Bill 362 since it went straight to the Committee of the
 20 Whole and not to State affairs?
 21 MR. SWEETEN: Objection; calls for
 22 legislative privilege. Your qualitative judgment about
 23 one committee process as opposed to another. That's a
 24 matter of legislative privilege. Instruct you not to
 25 answer.

149

1 MS. MARANZANO: Can we get these two
2 exhibits mark?
3 (Exhibit No. 526-527 was marked.)
4 BY MS. MARANZANO:
5 Q. Do you recognize these?
6 A. I believe so.
7 Q. What are these?
8 A. Well, Exhibit 526 is a letter from Senator Van de
9 Putte to me dated March 3, 2009. Opening a written
10 dialogue concerning the Committee of the Whole hearing
11 and ground rules. And the -- and 527 is a letter that I
12 wrote responding to her concerns dated March 5, 2009.
13 Q. And can you look at -- do you recall having this
14 exchange with Senator Van de Putte?
15 A. I recall that we wrote letters back and forth and
16 also had conversations seeking conversations about these
17 issues.
18 Q. Can you look at your response for me?
19 A. Yes, ma'am.
20 Q. And can you look at No. 1, the first sentence
21 says, "I am not inclined to support further delay in
22 consideration of voter identification legislation." Can
23 you tell me, based on the public record, had there been
24 a delay in the consideration of voter identification
25 legislation?

150

1 MR. SWEETEN: Yeah. Don't answer the
2 question. It calls for you to interpret what you said
3 there. Legislative privilege. You can answer as to
4 whether you said that.
5 A. That's a statement I wrote. But that's as much
6 as I can testify to.
7 Q. (By Ms. Maranzano) Okay. Can you -- can you
8 look down in that same paragraph where there's a
9 sentence that says, "More than a week's notice of a
10 hearing is much more than the Senate usually provides,"
11 what amount of notice does the Senate usually provide?
12 MR. SWEETEN: You can answer as a general
13 matter, but I don't want you to interpret statements on
14 this.
15 A. The rules of the Senate provide posting notices
16 and I believe, you can go with the rules, but I think
17 it's 24 hours or 48 hours to the tag and there's certain
18 periods of times it changes depending on the time of the
19 session. So the rules of the Senate would be the time
20 limits that committees are required to provide for
21 hearings. And I would just refer you to those rules
22 that were in effect.
23 Q. (By Ms. Maranzano) And is it -- is it your
24 testimony that more than a week's notice would be much
25 more than what the Senate would usually provide?

151

1 MR. SWEETEN: Again, don't refer to the
2 document itself or interpret the words on the page. If
3 you -- you can answer as a general matter about Senate
4 procedure matters of the public record.
5 A. Generally a week would be longer than normal
6 bills would -- notice on most bills.
7 Q. (By Ms. Maranzano) Are there some bills that you
8 give a longer amount of notice time for?
9 MR. SWEETEN: You can refer to matters of
10 the public record.
11 A. Generally, no. We generally -- we generally set
12 a hearing docket and post it within the required time
13 limits. Just depends on when it gets down to the
14 Senate.
15 Q. (By Ms. Maranzano) Is there any consideration of
16 whether there's significant public interest on a bill?
17 MR. SWEETEN: Yeah. Don't reveal that.
18 That would require you to reveal matters that are
19 privileged and instruct you not to answer.
20 BY MS. MARANZANO:
21 Q. Can you look at that paragraph below the one we
22 were just looking at? There's a sentence that says,
23 "Additionally, that committee heard extensive testimony
24 last session on a substantially similar voter election
25 bill. Texas Senate almost spent nearly an entire day on

152

1 the Senate floor discussing the importance of this
2 issue." Does that sentence refer to the debate that
3 occurred on the rules resolution?
4 MR. SWEETEN: Don't interpret the sentence
5 on the page. You can answer -- I mean, I don't know
6 that you can answer that. I think that's legislative
7 privilege.
8 MS. MARANZANO: So what he meant in this
9 letter --
10 MR. SWEETEN: He's not going to interpret
11 what he meant when he said it. That's legislatively
12 privileged. He can answer questions about the public
13 record, but he's not going to interpret the letter. That
14 would reveal his thoughts, mental impressions about a
15 bill in legislation.
16 MS. MARANZANO: I'm not sure I see that as
17 interpretation, but more just as what event he was
18 referring to. But in the interest of --
19 MR. SWEETEN: Well, I mean, as the court has
20 said, you can ask him about a public statement, he made
21 it, he didn't make it. The court has not said that you
22 can -- that you can go behind that and ask for reasons,
23 support or information or thought processes behind that
24 statement. In fact, they've said the contrary. And so
25 I'm drawing that line. I think that is an absolutely

153

1 correct interpretation of the court's decision on this
2 matter. That's why I'm not going to allow him to give
3 additional information about this statement or what he's
4 expressed.

5 BY MS. MARANZANO:

6 Q. Well, let me ask you this, Senator. That
7 sentence refers to there being discussion about the
8 importance of this issue. Was the substance of
9 legislation discussed during that discussion, which
10 appears to me is a discussion that happened on the
11 public record?

12 A. Well, let me answer it this way. I don't know of
13 any other hearing we had on the public record on the
14 Senate for a day other than the hearing on the rule.

15 Q. And was the substance of Senate Bill --

16 A. There may have been, but I don't recall.

17 Q. There may have been what?

18 A. There may have been other -- I don't recall any
19 other hearing before the Senate that lasted more than a
20 day, other than the one on Rule 5.11.

21 Q. And was the substance of Senate Bill 362
22 discussed in that debate?

23 A. The record will clearly reflect what issues were
24 discussed.

25 Q. And what's your recollection, as you sit here

154

1 today?

2 A. My recollection is, we talked about the issues of
3 voter identification and the issues of the special order
4 rule. But the record -- you would have to check the
5 record to get a better recollection or better reflection
6 of what was discussed. There were a lot of things
7 discussed that day.

8 Q. So your recollection is you talked about voter
9 identification and you don't recall whether or not --

10 A. I don't recall specifics independently. The
11 record will reflect that. That was a long day for me.
12 I had a personal tragedy.

13 Q. I'm sorry. Can you look at the next page for me?
14 By the --

15 A. The next -- my letter of March --

16 Q. Exactly. By paragraph 5. Can you read that?

17 A. Read it?

18 Q. Just take a look at it.

19 A. Yes.

20 Q. Is that about whether the office of the Attorney
21 General would be available to testify in a legislative
22 proceeding?

23 A. That's correct.

24 Q. Are you aware of whether this position -- am I
25 correct that what 5 -- what that paragraph is asserting

155

1 is that the office of Attorney General would not testify
2 because should there be litigation that would present a
3 conflict of sorts?

4 A. Well, I think you just have to read it.

5 Q. Well, how would you describe it for me?

6 A. As I wrote it.

7 Q. Which says, "Given fact that the office of the
8 Attorney General will represent the State of Texas in
9 litigation if any arising out of this legislation, it
10 would be inappropriate to present the Attorney General
11 as a witness in the legislative debate." Did that
12 position change in any of the legislative debates. And
13 that's -- that's a public record. Did the office of
14 Attorney General testify in the 2011 legislative session
15 on voter identification vote?

16 MR. SWEETEN: That second question, if the
17 AG testified, I'm fine with. The first one, whether his
18 position changed, I think we --

19 BY MS. MARANZANO:

20 Q. Okay. Let's go with the second one.

21 MR. SWEETEN: Because you amended the
22 question.

23 A. So to make sure I'm clear, would you restate it?

24 Q. (By Ms. Maranzano) Yeah. Did the office of the
25 Attorney General testify during the debate on SB 14?

156

1 A. There were staff persons from the office of the
2 Attorney General who testified on -- in the public
3 hearing on Senate Bill 362.

4 Q. On 362?

5 A. Or whatever it was.

6 Q. Senate Bill 14?

7 A. Yeah, I think on 14 as well.

8 Q. Okay. And you think they testified in 2009?

9 A. I think so.

10 Q. As well?

11 A. Yeah.

12 Q. Okay.

13 A. I'm sorry. I thought we were on --

14 Q. We were, but --

15 A. You've got to be clear with me on what you were
16 talking about.

17 Q. I'm sorry.

18 A. It will help me a lot.

19 MR. SWEETEN: Jennifer, I need to take a
20 2-minute break.

21 (Brief recess.)

22 MS. MARANZANO: Before we actually go back
23 into the substantive discussion we were having, I wanted
24 to raise an issue with Mr. Sweeten, on the record, about
25 documents that we believe should have been produced

157

1 yesterday pursuant to the court's order related to --
 2 this is from Page 15 of the June 5th order. The court
 3 ordered that y'all produce a constituent lobbyist and
 4 interest groups communication on legislative responses.
 5 And we believe that the privilege log asserts that there
 6 were some constituent communications with Senator
 7 Duncan's office that have not been produced. So I can
 8 give you the specific Bates ranges.

9 MR. SWEETEN: Do you want to -- looks like
 10 you've got them all written down.

11 MS. MARANZANO: I do.

12 MR. SWEETEN: Do you want to --

13 MS. MARANZANO: Why don't I read it into the
 14 record and then I can send you an e-mail follow-up.

15 MR. SWEETEN: Yeah. That would be helpful.

16 MS. MARANZANO: Okay.

17 MR. SWEETEN: Let me just say that, in
 18 response, that I know that we've obviously -- were in
 19 receipt of the court order. We obviously responded.
 20 And I would think you would agree that we sent,
 21 certainly over 1,000 constituent -- or documents fitting
 22 that description yesterday. You've been advised --

23 MS. MARANZANO: I can't represent the
 24 number. I understand that constituent communications
 25 were produced.

158

1 MR. SWEETEN: So you were given -- let's say
 2 this. You were given a substantial number of
 3 constituent communications. If you're suggesting that
 4 you don't think you got some of Senator Duncan's, then
 5 all I can do in response to that is to look. And we
 6 believe that we've been in full compliance with the
 7 court's order. But I will certainly look at your list
 8 and we'll double-check.

9 MS. MARANZANO: Right. And, I mean, that's
 10 what I'm asking. And I think -- because our
 11 understanding is we don't have these documents, I am
 12 going to need to hold the deposition open. But, you
 13 know, we will --

14 MR. SWEETEN: If at the next break I can
 15 potentially make a phone call and check to see.

16 MS. MARANZANO: So let me just read for the
 17 record that the Bates numbers are Texas 00203510, Texas
 18 0020354 -- 3524 through 3527, Texas 00203528 through
 19 3529, Texas 00203532, Texas 00203533 through 3539.
 20 Texas 00203540 through 3541. Texas 00203542 through
 21 00203544. Texas 00204706. Texas 00204707 through 4710.
 22 So those are the ones we're missing. And I can send you
 23 e-mail communication following up.

24 MR. SWEETEN: That actually would be helpful
 25 so we can have them all written down and we'll -- I'll

159

1 look into your suggestion. But again, I think we fully
 2 complied yesterday. But we'll check that. We'll check
 3 what you're suggesting.

4 MS. MARANZANO: To be clear, we're looking
 5 at the privilege log from May 21st and I believe these
 6 documents are explicitly listed as constituent
 7 communications.

8 BY MS. MARANZANO:

9 Q. Okay. Senator, we were talking about Senate Bill
 10 362 before the break. Can you tell me what your role
 11 was during the consideration of Senate Bill 362 when it
 12 went before the Committee of the Whole?

13 MR. SWEETEN: You can refer to your
 14 public -- matters of public record.

15 A. I was appointed to be the chairman of the
 16 Committee of the Whole.

17 Q. (By Ms. Maranzano) And what are your
 18 responsibility when you're chair of the Committee of the
 19 Whole?

20 A. To conduct the hearing.

21 Q. And can you describe to me what that means?

22 A. Well, it means setting the parameters for the
 23 ground -- the parameters and the ground rules for
 24 hearing witnesses and organizing the committee so that
 25 it moves in an orderly fashion. So that -- to work with

160

1 the members of the committee to determine how we will
 2 move through the witnesses expeditiously. To get
 3 consensus on order of witnesses and generally to ensure
 4 that there's proper de quorum during the hearing as it's
 5 taking place so that there can be the best quality of
 6 deliberations possible.

7 Q. When you say, "work with committee members," when
 8 this is a Committee of the Whole, does that mean work
 9 with everybody?

10 A. Right.

11 Q. Who just thought -- who appointed you to this
 12 position?

13 A. Lieutenant Governor appoints that committee
 14 chairman.

15 Q. Were witnesses invited to testify on the
 16 Committee of the Whole for Senate Bill 362?

17 A. The record reflects proponents and opponents that
 18 were invited.

19 Q. Do you recall what the break down of witnesses
 20 was between opponents and proponents?

21 A. No, the record will reflect that.

22 Q. What's the -- what's the usual break down between
 23 witnesses on either side of the bill?

24 MR. SWEETEN: Do you mean on the Committee
 25 of the Whole?

161

1 BY MS. MARANZANO:

2 Q. Well, why don't we talk about Committee of the
3 Whole first?

4 MR. SWEETEN: You can talk about general
5 procedure based on the public record.

6 A. There is no usual.

7 Q. (By Ms. Maranzano) What about in the State
8 Affairs Committee while you've been chair, what's the
9 usual break down of witnesses between supporters and
10 opponents of the bill?

11 MR. SWEETEN: Same instruction.

12 A. There is no usual. Just depends on the bill
13 and -- basically.

14 Q. (By Ms. Maranzano) what -- during the Committee
15 of the Whole, who invites the witnesses to testify?

16 A. The proponents and opponents of the bill. So any
17 member of the Senate can propose a witness and bring
18 them. It's not -- there's not any rule about that. So
19 that's the best way I can answer that.

20 Q. There's no rule. Is there a limited time for
21 which people can testify?

22 A. That's a consensus that we normally try to
23 develop a hearing and our standing committee hearing we
24 have witness limits sometimes. Sometimes we don't. And
25 on most public testimony we do have time limits in the

163

1 answer. You would have to rely on the record for that.

2 Q. Were there any public -- well, let me ask. Were
3 there any amendments to Senate Bill 362 when it was
4 being considered on the floor that were publicly stated
5 as amendments to respond to the concerns that SB 362
6 would disproportionately impact minority voters?

7 A. We had talked about this earlier. The record
8 would have to reflect it. Independently, I don't recall
9 and for some reason I think we -- there was a consensus
10 not to add amendments, but -- from everybody. But I
11 can't -- the record would reflect that.

12 (Exhibit No. 528 was marked.)

13 BY MS. MARANZANO:

14 Q. I'm showing what we're marking deposition
15 Exhibit 528. Can you take a look and tell me if you
16 recognize this and I will tell you that it's an excerpt
17 not the full record?

18 A. Appears to be an excerpt from the Senate journal
19 for the week -- or from the day of March 18, 2009.

20 Q. And can you look at the second page. Do you see
21 there's something that says, "statement regarding votes
22 cast on Senate Bill 362." If you would quickly take a
23 look at that. Is this something you've seen before?

24 A. This would be on the third page.

25 Q. It starts on the second and it goes on to the

162

1 Senate on public testimony.

2 Q. Do you recall if any groups representing minority
3 voters testified during the 2009 consideration of Senate
4 Bill 362?

5 A. I recall they did.

6 Q. Do you recall if concerns were raised about
7 Senate Bill 362's impact on minority voters, either by
8 these groups or by others?

9 MR. SWEETEN: You can testify to matters on
10 the public record.

11 A. I think the record will reflect they did. I
12 don't recall specifically what the objections were, as
13 we sit here today, independently.

14 Q. (By Ms. Maranzano) Do you recall who raised
15 those concerns?

16 MR. SWEETEN: Same instruction.

17 A. No. It would be on the record.

18 Q. (By Ms. Maranzano) Do you recall if legislators
19 raised those concerns?

20 MR. SWEETEN: Same instruction.

21 A. It would be on the record.

22 Q. (By Ms. Maranzano) And you have nothing to add
23 to the record in that regard?

24 A. No. The record -- I don't have independent --
25 enough independent recollection to give you an accurate

164

1 third?

2 A. Okay. Paragraph 3.

3 MR. SWEETEN: Are you talking about the
4 statement on the bottom?

5 BY MS. MARANZANO:

6 Q. The statement regarding both House and Senate
7 Bill 362. And it starts and it says, "Senator West
8 submitted the following statement," do you have that?

9 A. No. Sorry. I'm a slow reader I guess. What
10 page is it on? Third page?

11 Q. It starts right here. But actually I'm going to
12 direct your attention to No. 8?

13 MR. SWEETEN: Starting here, she wants you
14 to read that.

15 A. Senator West, yeah. I see that.

16 Q. (By Ms. Maranzano) Yeah. Do you recall this
17 happening?

18 A. No, I really don't. It's -- it may have been
19 submitted and not read to the Senate. It may have just
20 been submitted post-vote. Sometimes those get done.

21 Q. Okay. Can I direct your attention to No. 8 in
22 that -- in that statement. Do you see that it says, "Of
23 all the opportunities members of the Senate have had to
24 vote on voter identification legislation or Senate
25 process regarding voter identification legislation, no

165

1 senator who is an ethnic minority has voted in favor of
2 such legislation or the process related to such
3 legislation"?

4 A. I see that.

5 Q. Based on the public record -- let me ask you
6 this. Did you have any public response to the unified
7 opposition of the minority members of the Senate?

8 A. Are you talking about as reflected or a response
9 to Senator West's statement that he placed in the
10 record.

11 Q. I'm asking actually, more generally. Just this
12 statement talked about a unified opposition of minority
13 members of the Senate. And I'm asking if you had any
14 public response to that opposition.

15 A. Did I, as Senator Duncan have any public
16 response? I don't recall that I did.

17 Q. Do you recall the reasons why senators gave for
18 opposing voter ID?

19 MR. SWEETEN: Objection; call for matters
20 subject to legislative privilege. Instruct not the
21 answer.

22 BY MS. MARANZANO:

23 Q. How about if we base it on the public record?

24 MR. SWEETEN: You can testify as to matters
25 of public record.

166

1 A. Public record reflects their opposition to it.

2 Q. (By Ms. Maranzano) Do you recall if one of the
3 issues that they discussed on the public record was the
4 impact that Senate Bill 362 would have on minority
5 voters?

6 A. The record will reflect that if it was brought
7 up.

8 Q. So do you have no recollection of whether that
9 occurred?

10 A. My independent recollection is not accurate as to
11 exactly what was raised. Those issues generally were
12 discussed during our fairly lengthy debate on several
13 occasions on the issue. But specifically what issues --
14 how those issues were framed and what evidence was
15 brought forward I would have to rely on the record.

16 Q. Okay. So you have a recollection that it came up
17 generally, related to voter identification legislation?

18 A. Correct.

19 Q. And based on the public record, do you have any
20 reason to believe that these senators were not being
21 genuine about their concerns on the impact of the bill?

22 MR. SWEETEN: I'm going to object. Because
23 of the subjective interpretation and the sincerity of
24 these senators would be a matter of legislative
25 privilege. And I'm going to instruct him not to answer

167

1 on that basis.

2 BY MS. MARANZANO:

3 Q. Are you following your counsel's instruction?

4 A. Yes.

5 Q. Did any supporters of Senate Bill 362 publicly
6 state that if the Senate -- the legislature did not
7 respond to the concerns of minority legislators it might
8 threaten the preclearance of Senate Bill 362?

9 A. "Supporters," meaning?

10 Q. People who voted for it.

11 A. Members of the Senate?

12 MR. SWEETEN: Your question is about public
13 statements.

14 MS. MARANZANO: Uh-huh.

15 A. I don't know if they did or not.

16 Q. (By Ms. Maranzano) You don't recall that?

17 A. Right.

18 Q. Was it true that some legislators and members of
19 the public stayed up all night to testify about Senate
20 Bill 362?

21 A. The hearing lasted throughout the evening hours
22 and concluded in the late morning hours of the following
23 day.

24 Q. Was there any public discussion of what prompted
25 this level of interest in Senate Bill 362?

168

1 A. You know, I don't recall anything specifically
2 other than what would be on the record.

3 Q. And as you sit here today, you can't --

4 A. Well, I remember there were statements that were
5 made by some people who testified as experts and as
6 laypersons. But I don't -- I can't recall specifically
7 what they said to give you an accurate depiction of it,
8 but the record will reflect that.

9 Q. Well, what do you recall generally, even if you
10 don't recall specifically?

11 A. What I just said.

12 Q. That's it?

13 A. Right.

14 Q. Okay.

15 A. I mean, I recall some loud voices. I recall some
16 passionate testimony. I recall some very
17 straightforward testimony. And, you know, the
18 testimony, I thought, and the debate throughout the day
19 was generally -- we kept things moving. And the debate
20 was on both sides of the issue. And I can't remember
21 generally or specifically -- or specifically what was
22 said by any member of the Senate that day. But it is
23 reflected in the record. That's why we kept the record.

24 Q. Did you have any role when Senate Bill 362 was
25 referred to the House?

169

1 A. No.
 2 Q. Did you have any communications with any members
 3 of the House about Senate Bill 362?
 4 A. Yes.
 5 Q. With whom?
 6 A. Delwin Jones.
 7 Q. Delwin Jones? Is that what you said?
 8 A. Right.
 9 Q. Can you tell me in a general way what that
 10 communication was about?
 11 A. He's a member of the Lubbock delegation. Yeah, I
 12 can remember generally. But it was just about the bill.
 13 Q. Do you -- was it one communication or more than
 14 one?
 15 A. Just one or two.
 16 Q. Was it after the bill had been referred to the
 17 House or before?
 18 A. It was after.
 19 Q. Do you remember what happened to the bill in the
 20 House?
 21 A. Yes.
 22 Q. What happened?
 23 A. It didn't pass.
 24 Q. Was that because essentially the time ran out?
 25 MR. SWEETEN: Don't reveal matters of

170

1 legislative privilege in answering the question.
 2 A. Well, the record is fairly clear about what
 3 happened on that bill as it went to the House.
 4 Q. (By Ms. Maranzano) And you don't want to add
 5 anything to the record?
 6 A. I don't think you could add much to that record.
 7 Q. Fair enough. Have you heard of ID verification?
 8 MR. SWEETEN: You can answer as a general
 9 matter. Don't reveal any legislative -- your mental
 10 impressions. That would be subject to the legislative
 11 privilege.
 12 A. No. I'll have to say I don't know what you're
 13 talking about.
 14 MS. MARANZANO: Can we mark this?
 15 (Exhibit No. 529 was marked.)
 16 BY MS. MARANZANO:
 17 Q. I'm showing you what we're marking as deposition
 18 Exhibit 527? No, 529. Do you recognize this?
 19 A. No, but it's from Jennifer.
 20 Q. You testified earlier that Jennifer Fagan is a
 21 member of your staff?
 22 A. That's correct.
 23 Q. Do you know who John Sepehri is?
 24 A. John Sepehri? You'll have to refresh my memory.
 25 Q. My recollection is John Sepehri is the general

171

1 council for the Secretary of State, or at least was?
 2 A. Okay.
 3 Q. Does that refresh your recollection as to what
 4 this e-mail exchange is about?
 5 A. Yes. I guess -- well, I'm not familiar with this
 6 e-mail. So -- but if he works for the Secretary of
 7 State we often, through the State Affairs Committee,
 8 communicated with the Secretary of State's office about
 9 issues that we had questions about technically.
 10 Q. So what is the ID verification process bill that
 11 Jennifer refers to in her e-mail?
 12 A. I'll have --
 13 MR. SWEETEN: Don't discuss matters of
 14 legislative privilege including communications you had
 15 with State agencies.
 16 BY MS. MARANZANO:
 17 Q. But just generally, can you just tell me what --
 18 I mean, I'm not -- I'm not interested in what this
 19 exchange is about. I'm just asking you what is the
 20 topic on which this says we're not going to file voter
 21 identification -- ID verification process bill?
 22 A. I don't know.
 23 Q. Okay.
 24 A. I seriously do not know.
 25 Q. Okay.

172

1 A. It may have been discussed and I may have said no
 2 or we may not have. I don't know. I just have no
 3 idea what -- this is not ringing a bell with me today.
 4 Other than we didn't file it.
 5 MS. MARANZANO: Can we label that?
 6 (Exhibit No. 530 was marked.)
 7 BY MS. MARANZANO:
 8 Q. Senator, I'm showing you what we're labeling as
 9 Exhibit 530, for the record. Can you take a look at
 10 this and tell me if you recognize it?
 11 A. I would recognize this to be legislation titled
 12 Senate Bill 14.
 13 Q. If you look at the last page it has signatures on
 14 it.
 15 A. This appears to be signatures reflecting that it
 16 is the enrolled version of the bill signed by the
 17 governor.
 18 Q. Do you have any knowledge, based on public
 19 record, of when Senator Fraser started working on this
 20 bill?
 21 A. No, I do not.
 22 Q. Did you or anyone in your office have
 23 conversations with Senator Fraser about the development
 24 of what would become Senate Bill 14?
 25 A. Probably, at some point in time we did.

173

1 Q. And when was that?

2 A. I cannot tell you a specific time. I do not

3 know.

4 Q. Would that have been you or would that have been

5 your staff who had that communication?

6 A. If Senator Fraser and I had a conversation it

7 would have been more or less informal. It would not be

8 unusual for Senator Fraser's office to contact my staff

9 for information or records from the last committee or

10 from hearing or to discuss the issue. It would not be

11 unusual.

12 Q. Who on your staff would Senator Fraser have

13 contacted?

14 A. It would be Jennifer.

15 Q. When you said "record," -- what is the first

16 thing you said?

17 A. Well, I mean, this is speculation a little bit.

18 So I'm just saying if somebody wanted a document or

19 something they might call our office and request it.

20 Q. Do you have any knowledge as to whether Senator

21 Fraser's staff and Ms. Fagan did have any communications

22 about Senate Bill 14?

23 A. Define what you're talking about communications.

24 Q. I'm referring very broadly to conversations,

25 e-mails?

174

1 A. Yes.

2 Q. Yes you do have knowledge?

3 A. Yes.

4 Q. And did they?

5 A. The only -- the only communications that I would

6 be aware of would be communications about logistics.

7 They're going to file a bill. We're going to --

8 MR. SWEETEN: Don't reveal the substance on

9 it though.

10 BY MS. MARANZANO:

11 Q. Are you aware of whether there were any

12 substantive communications between your staff and

13 Senator Fraser's staff about Senate Bill 14?

14 A. I'm not -- I'm not aware of any.

15 Q. And I believe you said you may have had

16 conversations with Senator Fraser, but you don't recall

17 specifically whether you did or not?

18 A. Right.

19 Q. And would your conversations with Senator Fraser

20 have been about the substance of the bill or about the

21 logistics of the bill?

22 A. Probably both.

23 Q. And I assume since you said you have no specific

24 recollection you couldn't tell me how many substantive

25 conversations you had with Senator Fraser?

175

1 A. No, I couldn't.

2 Q. Could you give me an approximation?

3 A. It would be a guess.

4 Q. Did you have conversations with other legislators

5 about Senate Bill 14?

6 A. When?

7 Q. At any time?

8 A. I assume when you say "Senate Bill 14," it would

9 have to have been from the time we filed it because it

10 didn't have a name then. I'm just trying to understand

11 the time frames here.

12 Q. I appreciate that. Why don't we start and say

13 did you have any conversations with any legislators

14 about what would become Senate Bill 14?

15 A. No.

16 Q. Did you have any conversations with legislators

17 about Senate Bill 14?

18 A. Yes.

19 Q. With whom?

20 A. Well, from the time it was introduced until the

21 time it was passed, probably most members of the Texas

22 Senate.

23 Q. Okay. And would those have been verbal

24 communications?

25 A. Yes.

176

1 Q. Did you have any --

2 A. Unless there was -- unless there was some writing

3 between Senator Van de Putte and myself, she was acting

4 as chairman of the caucus. And as in 2009, I seem to

5 recall she may have sent a similar letter in 2011. But

6 I don't -- I'm sure you've got that if it's part of the

7 record.

8 Q. Did you have any conversations with any

9 legislators other than Senator Fraser who we've already

10 talked about, about the development or drafting of

11 Senate Bill 14?

12 MR. SWEETEN: Objection; vague. Go ahead

13 and answer it.

14 A. As far as drafting the original version, no.

15 Q. (By Ms. Maranzano) How about drafting later

16 versions?

17 A. Only to understand what was in the bill, which

18 would be generally what a legislator --

19 MR. SWEETEN: Don't talk about the

20 conversation.

21 BY MS. MARANZANO:

22 Q. Who were those conversations with?

23 A. I don't recall all who would have been involved

24 in that.

25 Q. Well, can you give me some names of who was

177

1 involved in that?

2 A. Well, it probably would have been Senator Fraser,

3 might have involved Senator Williams, Senator -- I don't

4 know if it involved Carona or not. It would have

5 involved Senator Van de Putte, Senator Ellis and others

6 who, as we generally discuss legislative matters coming

7 before the body.

8 Q. Are the members that you've just named on the

9 State Affairs Committee?

10 A. Some of them are.

11 Q. Which ones are not?

12 A. Well, I think Carona used to be. I think most of

13 them are. Maybe I talked to Senator West. He's not on

14 the committee.

15 Q. And you said, "to understand what was in the

16 bill." Is that what you testified to? Those were your

17 communications?

18 A. Well, just a listing of the bill and what's in

19 the bill.

20 Q. That's how you're describing your communications

21 with all of these members?

22 A. Right. Right.

23 Q. And when would those -- when would those

24 communications have occurred?

25 A. Throughout the period of deliberations on the

178

1 bill.

2 Q. Did you have any communications with the

3 Lieutenant Governor about Senate Bill 14?

4 A. Yes.

5 Q. And when was that -- or when were those?

6 A. Generally, as I've stated, randomly throughout

7 the process of deliberations on the bill.

8 Q. And what was the general nature of that

9 communication?

10 MR. SWEETEN: You can give a general subject

11 matter description of the communication. Do not reveal

12 the subject for communication.

13 A. Progress on setting the hearing, the process that

14 the senators have discussed with regard to the process

15 for procedures for the hearing, generally that was the

16 primary -- main reason for discussions.

17 Q. (By Ms. Maranzano) Did you set the hearing date

18 for the -- for Senate Bill 14?

19 A. I'll answer this in a way that nobody will

20 object. I don't remember.

21 Q. Did you have any conversations with the

22 governor's office about Senate Bill 14?

23 MR. SWEETEN: You can answer.

24 A. I don't know if I did or not.

25 Q. (By Ms. Maranzano) Does that mean you don't

179

1 recall any?

2 A. I don't remember any. Not saying I didn't. I

3 just don't remember any.

4 Q. Let me ask you this. Is it common to talk to the

5 governor's office about ongoing legislation?

6 A. For me --

7 MR. SWEETEN: Objection; vague and not

8 limited in time and scope, foundation. But you can go

9 ahead and answer it if you can. That's fine.

10 A. The answer is no. It's not common.

11 Q. (By Ms. Maranzano) Can you take a look at Senate

12 Bill 14? In particular, I would like to direct your

13 attention to Section 14 of the bill.

14 A. On what page?

15 Q. It's on Page 9. Do you see that it lists in that

16 section the forms of identification that are permissible

17 under Senate Bill 14?

18 A. The section is entitled documentation of proof of

19 identification.

20 Q. Yep. Do you see that?

21 A. Yes.

22 Q. Can you tell me what the major difference between

23 Senate Bill 14 and Senate Bill 362 are?

24 MR. SWEETEN: You can answer based on the

25 text of the bill. Don't give your mental impressions

180

1 and thoughts about it. We'll take a little while so

2 Jennifer can get a bite in.

3 A. There are numerous differences textually for one

4 reason or another and I can't tell you why.

5 MR. SWEETEN: Don't provide the reasons why.

6 She's just asking if there is a difference from this to

7 this.

8 A. There are differences.

9 Q. (By Ms. Maranzano) Does Senate Bill 14 allow for

10 any forms of non-photo identification?

11 A. The provisions that are in Section 14 of the bill

12 do not appear to provide a form of identification other

13 than one that includes a photo ID and I'm assuming a

14 license to carry a concealed hand gun license does.

15 That's in section 14.

16 Q. If you look at the very beginning of the

17 provision under Section 14, it says Section 63.0101. Do

18 you see that it actually specifies that the forms of

19 identification listed need to have a photo

20 identification?

21 A. Line 17 inserts the word photo.

22 Q. Can you tell me what the purpose was of removing

23 non-photo identification as allowable for voter

24 identification?

25 MR. SWEETEN: Don't answer the question. He

181

1 can testify about the general purpose of the bill. He's
 2 not going to testify about the specifics of one
 3 insertion, deletion, we're not going to parse it that
 4 way. That was issuing the purpose of the court's order.
 5 I'm going to instruct him not to answer that question.
 6 BY MS. MARANZANO:
 7 Q. Was there anything in the public record that you
 8 can refer to related to the purpose of removing
 9 non-photo IDs from Senate Bill 14?
 10 MR. SWEETEN: You can testify based upon
 11 matters of the public record. Don't reveal your
 12 thoughts, mental impressions in answering the question.
 13 A. The public record has a discussion between
 14 members of the Senate and debate on the floor concerning
 15 the purpose for the exclusion of non-photo ID methods of
 16 identification.
 17 Q. (By Ms. Maranzano) And what was the purpose of
 18 that as stated in the public record?
 19 A. The public record would reflect that.
 20 Q. Well, what's your testimony about it, as you sit
 21 here today?
 22 A. The general purpose of the bill is to basically
 23 ensure voter ballot integrity.
 24 Q. And removing non-photo identification from the
 25 bill is related to ensuring valid integrity?

182

1 MR. SWEETEN: He's not going to answer that
 2 question. He's not going to answer the reasons for the
 3 insertion or deletions of any bill. He's answered the
 4 general purpose of the bill. We're not going to have
 5 him give his thoughts and general impressions on
 6 various -- the reasons and thoughts behind -- or his
 7 impressions about the deletion or insertion of a given
 8 paragraph. Legislative privilege.
 9 BY MS. MARANZANO:
 10 Q. I'm going to ask you about the public record
 11 related to the removal of non-photo ID. You mentioned
 12 ensuring voter integrity, the integrity of the ballot.
 13 So based on the public record, what was said about how
 14 non-photo IDs are connected to ensuring the integrity of
 15 the ballot?
 16 MR. SWEETEN: Misstates the testimony.
 17 Objection. You can answer as to what was said in the
 18 public record to the extent you recall. Do not give
 19 reasons behind any changes made. That's subject to the
 20 legislative privilege. You can answer based on that
 21 instruction.
 22 A. I can't -- I do not have independent recollection
 23 of exactly what was said. I would not want to
 24 mischaracterize what was said. And the public record
 25 accurately reflects that and I would refer you to the

183

1 public record.
 2 Q. (By Ms. Maranzano) You have no independent
 3 recollection?
 4 A. Not that would be accurate that I could testify
 5 to.
 6 Q. And what about your recollection of the public
 7 record as related to the purpose of allowing forms of
 8 identification that had expired 60 days before
 9 presentation?
 10 MR. SWEETEN: Once again, you can refer to
 11 matters in the public record in answering this question.
 12 Don't reveal matters of legislative privilege.
 13 A. I couldn't answer that. I don't have a
 14 recollection of the details concerning those
 15 discussions.
 16 Q. (By Ms. Maranzano) Are you aware of the source
 17 of the language for Senate Bill 14 or sources of the
 18 language?
 19 MR. SWEETEN: You can answer that question
 20 "yes" or "no".
 21 A. Yes.
 22 Q. (By Ms. Maranzano) Was there anything on the
 23 public record about the source or sources of the
 24 language in Senate Bill 14?
 25 A. I think there may be. I don't recall

184

1 specifically. But I think there were discussions about
 2 that on the Senate floor --
 3 Q. Can you tell -- I'm sorry.
 4 A. Or in the debate.
 5 Q. Can you tell me what those discussions were?
 6 A. Not without seeing the record.
 7 Q. You can't testify to anything, as you sit here
 8 today?
 9 A. Again, I don't want to be inaccurate. And what I
 10 recall about what was said as opposed to what was said
 11 is not relevant. The record is the relevant testimony
 12 with regard to the issues that you're asking about.
 13 Q. Who was involved in the drafting of Senate Bill
 14 14?
 15 A. Senator Fraser.
 16 Q. Anybody else?
 17 A. I have no recollection of who else might have
 18 been involved. It came out of his office. And to what
 19 extent other members or other staff members were
 20 involved, I don't know.
 21 Q. Did you have any communications with current or
 22 former legislators about Senate Bill 14 -- I'm sorry.
 23 Do you have any communications about Senate Bill 14 with
 24 current or former legislators who had offered other
 25 voter identification bills?

185

1 A. I don't know.
 2 Q. You don't know?
 3 A. I don't know.
 4 Q. Because you don't know --
 5 A. Yeah. I don't know what other people have
 6 offered. If you could be -- I don't know.
 7 Q. Did you have any conversations with
 8 Representative Denny about Senate Bill 14?
 9 A. No. Well, if I did it would have been in 2005
 10 whenever, I think she had -- she had a bill -- or wasn't
 11 she on one of those bills that we looked at earlier.
 12 Q. I'm sorry. Did you have any communications with
 13 her about Senate Bill 14?
 14 A. Oh, no, I don't believe so.
 15 Q. Did you have any communications with
 16 Representative Betty Brown about Senate Bill 14?
 17 A. No, I don't know Betty Brown very well.
 18 Q. Did you have any communications with
 19 representative Leo Berman about Senate Bill 14?
 20 A. I don't recall having any with Leo.
 21 Q. And did you have any conversations with the staff
 22 people of any of those members?
 23 A. I don't believe so.
 24 Q. Did you have any communications with officials or
 25 legislators in the State of Georgia about Senate Bill

187

1 Senate debate.
 2 Q. (By Ms. Maranzano) Okay. We can get to that in
 3 a few minutes.
 4 A. Okay.
 5 Q. But other than that, do you recall any
 6 conversations, publicly, about the -- about adding
 7 additional forms of identification to Senate Bill 14?
 8 MR. SWEETEN: You can testify about matters
 9 in the public record.
 10 A. The public record probably reflects some
 11 discussion about that.
 12 Q. (By Ms. Maranzano) Okay. And you have no
 13 independent recollection?
 14 A. I don't have independent recollection of what was
 15 said other than the fact that I believe there was some
 16 discussion about that on the public record.
 17 Q. Based on the public record, are you aware of any
 18 analysis as to how many registered voters possess the
 19 required forms of identification in Senate Bill 14?
 20 MR. SWEETEN: You can testify about matters
 21 on the public record.
 22 A. I believe the public record may reflect some
 23 estimates of that. But I don't recall exactly what they
 24 reflect, the record would show that more accurately.
 25 Q. (By Ms. Maranzano) Have you heard of a Spanish

186

1 14?
 2 A. No.
 3 Q. Did you have communications with any officials or
 4 legislators in the State of Indiana about Senate Bill
 5 14?
 6 A. I did not.
 7 Q. Did anybody in your office?
 8 A. I do not know. Jennifer may have, but I don't
 9 know.
 10 Q. And how about with Georgia, do you know if
 11 anybody in your office had communications?
 12 A. I don't know.
 13 Q. Did the legislature publicly considered adding
 14 additional forms of identification to Senate Bill 14?
 15 MR. SWEETEN: Don't answer to the extent it
 16 calls for you do reveal legislative privilege. You can
 17 testify as to matters on the public record.
 18 A. I can't -- the reason I'm having trouble with
 19 this is because I can't remember if we offered
 20 amendments on Senate Bill 14 on the floor during the
 21 Committee of the Whole or during the debate. The record
 22 will reveal that. And it may be that someone did, but
 23 it would depend on whether or not there were amendmen
 24 proposals that were offered to Senate Bill 14, either
 25 during the Committee of the Whole or during the general

188

1 surname voter registration analysis?
 2 A. I believe I have.
 3 Q. Are you aware, based on the public record,
 4 whether the Secretary of State conducted such an
 5 analysis while the legislature was considering Senate
 6 Bill 14?
 7 A. You would have to go to the record to be accurate
 8 about that. I seem to recall some discussion about
 9 that, but I don't recall what the conclusion was.
 10 Q. Do you recall Senator Williams asking the
 11 Secretary of State's office?
 12 A. No.
 13 Q. Did Legislature -- let me start again. Are you
 14 aware, based on the public record, of whether the
 15 legislature conducted any analysis to determine whether
 16 minority voters would be disproportionately impacted by
 17 Senate Bill 14?
 18 MR. SWEETEN: You're asking him about
 19 legislator's analysis. It calls for speculation. It
 20 also calls for him to reveal legislative privilege
 21 including your mental impressions, thoughts,
 22 motivations, discussions with other members, staff
 23 members. And I'm going to instruct him not to answer on
 24 that basis. To the extent that there is a discussion on
 25 the public record regarding that issue I'll let you

189

1 refer to the record, but other than do not answer the
2 question.

3 BY MS. MARANZANO:

4 Q. Are there any specific conversations on the
5 public record about that?

6 A. You'll have to look at the record.

7 THE REPORTER: I'm sorry. I didn't
8 understand.

9 THE WITNESS: She'll -- you'll have to look
10 at the record.

11 BY MS. MARANZANO:

12 Q. Are you aware of any legislators publicly
13 requesting that analysis?

14 A. As I sit here today, no. The record may reflect
15 that they did.

16 Q. If I told you that Senator Fraser's chief of
17 staff testified that there was no analysis of who had
18 some ID for purposes of Senate Bill 14, would you
19 dispute that?

20 MR. SWEETEN: Objection; assumes facts not
21 in evidence, misstates testimony and also calls for
22 matters subject to the legislative privilege. Don't
23 answer if it would reveal any matters subject to the
24 privilege.

25 A. I can't respond to that.

190

1 Q. (By Ms. Maranzano) Because it's privileged?

2 A. Because I don't know.

3 Q. Do you know what a military identification card
4 is?

5 A. Generally.

6 Q. What is it?

7 A. Well, I assume that it's an identification issued
8 to persons who are enlisted in the military.

9 Q. Do you know how many different forms of
10 identification fall into that category?

11 A. I don't recall.

12 Q. Is that something -- when you say "you don't
13 recall," is that something you think you knew when you
14 considered Senate Bill 14?

15 MR. SWEETEN: And don't answer that. You're
16 not going to reveal your mental impressions or analysis
17 or thought process. That's a legislative privilege.

18 Instruct not to answer.

19 BY MS. MARANZANO:

20 Q. Do you know what a citizenship certificate is?

21 A. Only generally.

22 Q. Do you know what steps a person needs to take to
23 obtain a citizenship certificate?

24 A. Not off the top of my head.

25 Q. Do you know how much it costs to obtain a

191

1 citizenship certificate?

2 A. Not off the top of my head.

3 Q. Do you know -- do you know how much it costs to
4 obtain a US passport?

5 A. Yes.

6 Q. How much?

7 A. I think it's \$37, but I just bought one so that's

8 why I know. But I think it's -- by the time you get the
9 picture made and everything like that, it's like \$35 to
10 \$37.

11 Q. And do you know what documents you need to
12 provide in order to get one, a US passport?

13 A. Yes.

14 Q. Which documents?

15 A. A birth certificate.

16 Q. Do you know how long it takes to obtain a US
17 passport?

18 A. Not generally.

19 Q. How long did it take you to get yours?

20 A. I'm speculating. A month, three weeks to a
21 month.

22 Q. Is there anything in public record about a change
23 in circumstances between 2009 and 2011 that would have
24 made non-photo identification acceptable in 2009, but
25 not in 2011?

192

1 MR. SWEETEN: Objection; calls for matters
2 subject to the legislative privilege. You can testify
3 if there was such an explicit statement made in the
4 public record. But otherwise don't reveal your thought
5 processes.

6 A. I don't know if there was a statement like that
7 might made or not.

8 Q. (By Ms. Maranzano) You have no recollection of
9 that?

10 A. No.

11 Q. Was there any statement in the public record
12 about removing from Senate Bill 14 the option to show a
13 state or federal issued identification as is allowed in
14 Senate Bill 362?

15 MR. SWEETEN: You can testify about matters
16 on the public record.

17 A. I don't completely understand the question.

18 Q. (By Ms. Maranzano) Do you recall when we talked
19 about Senate Bill 362 we read that section --

20 A. Right.

21 Q. That allowed for a State or federally issued
22 photo ID. Was there anything stated on the public
23 record about the purpose of removing those forms of
24 identification from Senate Bill 14, although they had
25 been allowed in Senate Bill 362?

193

1 MR. SWEETEN: Same objection and
 2 instruction.
 3 A. That issue may have been discussed on the Senate
 4 floor and would be a part of the Senate record.
 5 Q. (By Ms. Maranzano) You have no independent
 6 recollection?
 7 A. Not really.
 8 Q. Any at all?
 9 A. Well, generally a change in the bill, and I
 10 assume that a change in the bill was discussed. I'm
 11 going off of memory, but I would assume that in 14 there
 12 was a change from 362 and those discussions took place
 13 on the Senate floor. And I remember the -- that Senator
 14 Fraser probably laid out those changes on the public
 15 record. That's what I recall. But I couldn't tell do
 16 you specifically what he said. You would have to go to
 17 the record.
 18 Q. Was it Senator Fraser's decision to make those
 19 changes?
 20 MR. SWEETEN: Objection. Requires him to
 21 speculate. Requires him to reveal communications
 22 between -- if any, between he and Senator Fraser or any
 23 other legislator. So to the extent it's even passed by
 24 legislative privilege don't answer the question.
 25 BY MS. MARANZANO:

194

1 Q. I assume you're following your counsel's
 2 instruction?
 3 A. Yes, ma'am.
 4 Q. Do you recall the circumstances by which the
 5 license to carry a concealed hand gun were included
 6 in -- came to be included in Senate Bill 14?
 7 MR. SWEETEN: Don't reveal matters of
 8 privilege.
 9 A. No.
 10 Q. (By Ms. Maranzano) Do you know the racial
 11 composition of individuals who possess a license to
 12 carry a concealed handgun?
 13 A. No. No. I should say it louder.
 14 MR. SWEETEN: An objection to the extent it
 15 calls for legislative privilege.
 16 BY MS. MARANZANO:
 17 Q. Is it disproportionately white relative to Texas
 18 registered voters?
 19 MR. SWEETEN: Objections; asked and
 20 answered. Objection to the extent it calls for your
 21 mental impressions about a bill, but you can answer
 22 otherwise.
 23 A. I don't know. If it's on the record, it's on the
 24 record.
 25 Q. (By Ms. Maranzano) Well, are you aware of any

195

1 legislator who made a statement on the public record
 2 about the racial composition of the license to carry
 3 holders?
 4 THE REPORTER: Wait.
 5 MS. MARANZANO: About the racial composition
 6 of the license to carry holders.
 7 A. I recall there was a conversation about the -- on
 8 the public record about the use of the license to carry
 9 as a form of identification. I do not remember -- I
 10 cannot recall independently with accuracy the content of
 11 those statements. That would be reflected in the
 12 record.
 13 Q. (By Ms. Maranzano) And how did the exceptions
 14 with individuals with disability come to be included in
 15 Senate Bill 14, based on the public record?
 16 MR. SWEETEN: Don't answer to the extent it
 17 would require to you to reveal matters of legislative
 18 privilege. To the extent you can refer to matters in
 19 the public record, you can do so.
 20 A. There may have been some testimony. I can't
 21 recall specifically. I think there was concerning that.
 22 Q. (By Ms. Maranzano) From certain advocates, did
 23 you say?
 24 A. Correct. On the record. Or some reference to
 25 that on the record.

196

1 Q. And was this added? Was this provisions added to
 2 the bill after the testimony from advocates?
 3 A. I don't --
 4 MR. SWEETEN: Hold on a minute. Hold on a
 5 minute. Can you read the question back, please?
 6 (Requested question was read.)
 7 MR. SWEETEN: So you're asking about an
 8 amendment, whether it was -- which is a public record,
 9 whether it was added after a public record statement.
 10 Is that the question?
 11 MS. MARANZANO: Uh-huh.
 12 MR. SWEETEN: Then you can answer as
 13 phrased.
 14 A. I don't know.
 15 Q. (By Ms. Maranzano) Is your recollection that the
 16 amendment was a response to the testimony from advocates
 17 from the disability community?
 18 MR. SWEETEN: Don't answer the question. It
 19 calls for matters of legislative privilege as to what
 20 the response was, if any.
 21 BY MS. MARANZANO:
 22 Q. How did the exception for individuals with
 23 religious objections to being photographed come to be
 24 included in Senate Bill 14?
 25 MR. SWEETEN: Don't answer the question. It

<p style="text-align: center;">197</p> <p>1 calls for matters of legislative privilege. You can</p> <p>2 testify about the public record, such as an amendment.</p> <p>3 BY MS. MARANZANO:</p> <p>4 Q. Was that part of an amendment?</p> <p>5 A. You would have to look at the record.</p> <p>6 Q. You have no independent recollection?</p> <p>7 A. No.</p> <p>8 Q. Is it fair to say that the legislators --</p> <p>9 legislators modify Senate Bill 14 to respond to concerns</p> <p>10 raised by disability groups?</p> <p>11 MR. SWEETEN: Don't answer the question.</p> <p>12 Calls for matters of legislative privilege.</p> <p>13 BY MS. MARANZANO:</p> <p>14 Q. Were there any public discussions about the</p> <p>15 provisions in Senate Bill 14 pertaining to the</p> <p>16 administration of identification requirement -- that the</p> <p>17 identification requirement at the polling place?</p> <p>18 MR. SWEETEN: You can answer if there's a</p> <p>19 public statement.</p> <p>20 A. I'm not sure that I follow the question enough to</p> <p>21 give you an answer. I don't -- so I can't answer the</p> <p>22 question.</p> <p>23 Q. (By Ms. Maranzano) Were there any public</p> <p>24 discussions about how at a polling place that Senate</p> <p>25 Bill 14 would be administered? In other words, how the</p>	<p style="text-align: center;">199</p> <p>1 form of identification was added to Senate Bill 14?</p> <p>2 MR. SWEETEN: Don't reveal matters of</p> <p>3 legislative privilege. In fact, court reporter, would</p> <p>4 you please read that question back.</p> <p>5 (Requested question was read.)</p> <p>6 MR. SWEETEN: Okay. You can -- because it's</p> <p>7 got matters of the public record. Don't reveal</p> <p>8 legislative privilege, but you can answer as to the</p> <p>9 public record. Go ahead.</p> <p>10 A. No, I do not know when or how it was added. I'm</p> <p>11 about ready for a break. I don't know about y'all.</p> <p>12 MR. SWEETEN: Okay. Let's take a break.</p> <p>13 MS. MARANZANO: Let's take a break.</p> <p>14 (Brief recess.)</p> <p>15 BY MS. MARANZANO:</p> <p>16 Q. Senator, before the break we were talking about</p> <p>17 the election identification certificate. Are you aware,</p> <p>18 based on the public record, of concerns about potential</p> <p>19 difficulties in obtaining an election certificate?</p> <p>20 A. I'm aware that the issue of the ease or</p> <p>21 difficulty of retaining a certificate was discussed on</p> <p>22 the public record.</p> <p>23 Q. Do you recall there being concerns voiced on the</p> <p>24 public record about the distance to drive to those</p> <p>25 offices?</p>
<p style="text-align: center;">198</p> <p>1 requirements laid out in Senate Bill 14 would come to be</p> <p>2 administered at a polling place.</p> <p>3 A. You would have to refer to the public record.</p> <p>4 Q. You have no independent recollection of those</p> <p>5 discussions?</p> <p>6 THE REPORTER: No recollection of what?</p> <p>7 MS. MARANZANO: Of those discussions on the</p> <p>8 public record.</p> <p>9 A. I do not have an independent recollection of what</p> <p>10 was said. I am only -- you have to refer to the record</p> <p>11 on that.</p> <p>12 Q. (By Ms. Maranzano) Were there any public</p> <p>13 discussions about including more specific language in</p> <p>14 Senate Bill 14 related to what a poll worker would need</p> <p>15 to do to verify somebody's identity?</p> <p>16 A. I don't remember that. There may have been, but</p> <p>17 I don't remember it.</p> <p>18 Q. Are you familiar with the provision in Senate</p> <p>19 Bill 14 that allows a person to show a form of</p> <p>20 identification called an election identification</p> <p>21 certificate?</p> <p>22 A. I think if that's referring to the provision that</p> <p>23 allows a person to go to the DPS to get an ID for free,</p> <p>24 if that's the title of that, yes, I've heard of that.</p> <p>25 Q. Do you recall anything publicly about how this</p>	<p style="text-align: center;">200</p> <p>1 A. I would refer to you to public record with regard</p> <p>2 to the specific discussions concerning specific concerns</p> <p>3 about that.</p> <p>4 Q. You don't have any independent recollection of</p> <p>5 the various concerns that were raised?</p> <p>6 A. Not sufficient to give you an accurate depiction</p> <p>7 of that or accurate account of it.</p> <p>8 Q. During the drafting of Senate Bill 14 or the</p> <p>9 consideration of Senate Bill 14, was there any publicly</p> <p>10 spoken about or discussed analysis of the cost for</p> <p>11 obtaining an election identification certificate?</p> <p>12 MR. SWEETEN: Don't reveal matters of</p> <p>13 privilege. You can reveal matters of public record.</p> <p>14 A. I think anything having to do with drafting would</p> <p>15 be privileged. On the public record there was some</p> <p>16 discussions about the cost and whether or not</p> <p>17 appropriations would occur to cover those costs.</p> <p>18 Q. (By Ms. Maranzano) And was there discussion on</p> <p>19 the public record about the steps a voter might have to</p> <p>20 take to obtain an election identification certificate?</p> <p>21 A. There may have been. I would refer you to the</p> <p>22 record for an accurate account of that.</p> <p>23 Q. And was there any discussion on the public record</p> <p>24 about the cost that those steps might -- costs that a</p> <p>25 voter might incur in obtaining an election</p>

<p style="text-align: center;">201</p> <p>1 identification certificate?</p> <p>2 A. I believe there was some discussion of that.</p> <p>3 Q. What discussion was that?</p> <p>4 A. You'll have to refer to the record for an</p> <p>5 accurate account of that.</p> <p>6 Q. Do you know what documents are needed to obtain</p> <p>7 an election certificate?</p> <p>8 MR. SWEETEN: As he is sitting here.</p> <p>9 MS. MARANZANO: Yes.</p> <p>10 A. You would have to refer -- I don't have an</p> <p>11 independent recollection of that.</p> <p>12 Q. (By Ms. Maranzano) You don't know, as you sit</p> <p>13 here?</p> <p>14 A. No, I don't. I would have to look it up.</p> <p>15 Q. Do you know if there was any discussion on the</p> <p>16 public record about an analysis conducted regarding</p> <p>17 individuals who would or would not possess those</p> <p>18 underlying forms of documentation.</p> <p>19 A. I don't know what you mean by "analysis." I know</p> <p>20 there was discussion at length about that issue or</p> <p>21 whether or not -- about the issue of obtaining an</p> <p>22 alternative ID. The specifics of that, though, I can't</p> <p>23 give you accurately from independent recollection and</p> <p>24 would refer you to the record.</p> <p>25 Q. Did the legislature conduct any sort of analysis</p>	<p style="text-align: center;">203</p> <p>1 Department of Public Safety.</p> <p>2 Q. And when -- is it the driver's license offices?</p> <p>3 A. I believe it is.</p> <p>4 Q. When are those offices usually -- what are the</p> <p>5 hours of those offices generally?</p> <p>6 A. I would have to call and find out. I would</p> <p>7 assume from 9:00 to 5:00 during the weekdays. But there</p> <p>8 may be -- some offices may have local rules or local</p> <p>9 opening times that are different.</p> <p>10 Q. Does Senate Bill 14 require employees to provide</p> <p>11 paid leave for somebody to obtain an identification?</p> <p>12 A. You'd have to refer to the legislation for that.</p> <p>13 Q. Do you have any independent recollection of</p> <p>14 whether that's included?</p> <p>15 A. Not at this time.</p> <p>16 Q. Are you aware of any analysis, public analysis</p> <p>17 conducted to determine if any Hispanic or blacks or any</p> <p>18 other group are more likely not to have the necessary</p> <p>19 identification under Senate Bill 14?</p> <p>20 MR. SWEETEN: I'm going to instruct you not</p> <p>21 to answer on the basis of legislative privilege.</p> <p>22 MS. MARANZANO: I asked about public</p> <p>23 analysis.</p> <p>24 MR. SWEETEN: If you're talking about public</p> <p>25 testimony about analysis, boy, I think that's been asked</p>
<p style="text-align: center;">202</p> <p>1 in a public way about -- in terms of documents that are</p> <p>2 needed to obtain election identification certificate in</p> <p>3 terms of who would have those documents?</p> <p>4 MR. SWEETEN: You can testify about matters</p> <p>5 in the record. Don't reveal matters of privilege.</p> <p>6 A. To the extent there was -- I don't know if it's</p> <p>7 the word "analysis," but there was a discussion on that</p> <p>8 in the -- on the Senate -- during the debate on the bill</p> <p>9 either at the committee level or on the Senate floor or</p> <p>10 both.</p> <p>11 Q. (By Ms. Maranzano) If the documents needed to</p> <p>12 obtain an election identification certificate have a</p> <p>13 cost to them, then would you agree that that is actually</p> <p>14 charging a voter to vote?</p> <p>15 MR. SWEETEN: Objection; don't reveal your</p> <p>16 thought process, mental impressions, opinions,</p> <p>17 motivations about the legislation in answering this</p> <p>18 question. So unless you can avoid doing that, I'm going</p> <p>19 to instruct you not to answer the question.</p> <p>20 A. An answer to that would require me to invoke my</p> <p>21 mental impressions and analysis so I would prefer to</p> <p>22 invoke the legislative privilege.</p> <p>23 Q. (By Ms. Maranzano) Do you know where a person</p> <p>24 can obtain an election identification certificate?</p> <p>25 A. Under the statute, I believe that it is the</p>	<p style="text-align: center;">204</p> <p>1 and answered a number of times, but you can go ahead and</p> <p>2 you can answer.</p> <p>3 A. I would refer you to the record on that.</p> <p>4 Q. (By Ms. Maranzano) No independent recollection?</p> <p>5 A. My independent recollection is not include enough</p> <p>6 information to be accurate to give you testimony with</p> <p>7 regard to such analysis. If it occurs on the record I</p> <p>8 would refer you to the record for an accurate account on</p> <p>9 that.</p> <p>10 Q. Are you familiar with the provisional ballot</p> <p>11 provisions in Senate Bill 14?</p> <p>12 A. If you'll point me to that provision. Refresh my</p> <p>13 memory.</p> <p>14 Q. Section 17 talks about provisional ballots.</p> <p>15 A. Section 17. I'm sorry.</p> <p>16 Q. Starts on Page 11 and goes on to Page 12.</p> <p>17 A. Okay. Section 17.</p> <p>18 Q. Uh-huh.</p> <p>19 A. I'm generally familiar with Section 17, Senate</p> <p>20 Bill 14.</p> <p>21 Q. Do you think that individuals who vote a</p> <p>22 provisional ballot, except for some narrow exceptions,</p> <p>23 need to show the same forms of ID as is required under</p> <p>24 the bill for voters who cast a regular ballot, in order</p> <p>25 for their ballot to be counted?</p>

<p style="text-align: center;">205</p> <p>1 MR. SWEETEN: You can talk about the text of</p> <p>2 the bill. Don't reveal your thoughts and mental</p> <p>3 impressions about legislation.</p> <p>4 BY MS. MARANZANO:</p> <p>5 Q. Do you recall my question?</p> <p>6 A. Vaguely. If you'll remember -- If you'll</p> <p>7 rephrase it.</p> <p>8 Q. I'm wondering whether -- with, except for some</p> <p>9 narrow exceptions, it's essentially the same</p> <p>10 identification requirements for those who cast a</p> <p>11 provisional ballots, correct?</p> <p>12 A. No.</p> <p>13 Q. What's the difference?</p> <p>14 A. Well, I think B -- Subsection B and C provides</p> <p>15 affidavits -- an opportunity to present an affidavit --</p> <p>16 Q. So you're --</p> <p>17 THE REPORTER: I'm sorry.</p> <p>18 THE WITNESS: For the reasons stated</p> <p>19 therein.</p> <p>20 BY MS. MARANZANO:</p> <p>21 Q. So Section B you're referring to is individuals</p> <p>22 who have a religious objection to being photographed?</p> <p>23 A. Right.</p> <p>24 Q. And Section C is individuals who do not have</p> <p>25 identification meeting the requirements because of a</p>	<p style="text-align: center;">207</p> <p>1 forms of identification as listed in Senate Bill 14?</p> <p>2 A. The Section 65.0541, Subdivision 1, provides that</p> <p>3 the photo ID would be required or the affidavits</p> <p>4 required as discussed earlier.</p> <p>5 Q. The affidavits for -- that we just discussed with</p> <p>6 an individual?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Does the voter have to show their</p> <p>9 identification to a voter registrar, voter who cast a</p> <p>10 provisional ballot has to show one of the forms of</p> <p>11 required identification to a voter registrar, correct?</p> <p>12 A. I believe there's the provision in the statute.</p> <p>13 Q. Is this a voter registrar office in every county?</p> <p>14 A. I believe there is.</p> <p>15 Q. Are they usually in the county seat? Are they</p> <p>16 usually located --</p> <p>17 A. That would be normally where they would be.</p> <p>18 Q. What's the purpose of Senate Bill 14?</p> <p>19 MR. SWEETEN: You can give the general</p> <p>20 purpose.</p> <p>21 A. The general purpose is to in sure ballot</p> <p>22 integrity.</p> <p>23 Q. (By Ms. Maranzano) Based on the public record,</p> <p>24 can you tell me the basis of that statement? Your</p> <p>25 saying that's the purpose.</p>
<p style="text-align: center;">206</p> <p>1 natural disaster that was declared by the President of</p> <p>2 the United States or the governor which occur no earlier</p> <p>3 than 45 days before the date the ballot was cast and</p> <p>4 lead to the destruction of the identification; is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And so other than those exceptions individuals</p> <p>8 who cast a provisional ballot need to show one of the</p> <p>9 forms required of identification?</p> <p>10 MR. SWEETEN: I'm sorry. Can you read the</p> <p>11 question back, please?</p> <p>12 (Requested question was read.)</p> <p>13 MR. SWEETEN: You can testify based upon the</p> <p>14 text of the bill don't reveal your thoughts, mental</p> <p>15 impression that would be a matter of legislative</p> <p>16 privilege. Go ahead and answer it.</p> <p>17 A. The provision for that -- for provisional ballots</p> <p>18 is contained in Section 17 and also discussed in Section</p> <p>19 18 of the bill. And those provisions would appear to</p> <p>20 provide the process for provisional ballot. What's</p> <p>21 required in the event a provisional ballot is cast with</p> <p>22 regard to identification.</p> <p>23 Q. (By Ms. Maranzano) And other than the exceptions</p> <p>24 that we've discussed, does a voter who casts a</p> <p>25 provisional ballot need to show one of the required</p>	<p style="text-align: center;">208</p> <p>1 MR. SWEETEN: That calls for matters of</p> <p>2 legislative privilege. He can testify to purpose, which</p> <p>3 he did. You're asking him now to go to the public</p> <p>4 record and do an analysis and give you the reasons that</p> <p>5 are in the public record in support of what he has</p> <p>6 stated as general purpose. And to do so would discover</p> <p>7 his mental impressions and be subject to the mental</p> <p>8 impressions. I instruct you not to answer.</p> <p>9 BY MS. MARANZANO:</p> <p>10 Q. Any other purposes of Senate Bill 14?</p> <p>11 A. That's the general purpose.</p> <p>12 Q. Can you tell me each and every purpose of Senate</p> <p>13 Bill 14?</p> <p>14 MR. SWEETEN: Asked and answered.</p> <p>15 A. I've told you the general purpose which is my</p> <p>16 response to your question.</p> <p>17 Q. (By Ms. Maranzano) So are there any other</p> <p>18 purposes?</p> <p>19 A. There are -- there is a general purpose to the</p> <p>20 statute, as I stated. And it's broad enough to include</p> <p>21 the general purpose, as I stated.</p> <p>22 Q. I would like to know each and every purpose of</p> <p>23 Senate Bill 14?</p> <p>24 MR. SWEETEN: He's answered the question.</p> <p>25 Asked and answered.</p>

209

1 MS. MARANZANO: He hasn't answered that
 2 question.
 3 MR. SWEETEN: He's given you the purpose of
 4 the bill. Objection; asked and answered.
 5 A. The purpose of the bill is generally to prevent
 6 and preserve -- prevent fraud and observe -- preserve
 7 the integrity of the ballot.
 8 Q. (By Ms. Maranzano) And the reason why I was
 9 following up is because you say "generally." So I'm
 10 just trying to make sure I have every purpose of Senate
 11 Bill 14?
 12 A. Well, when I say "generally," means the general
 13 purpose of the bill.
 14 Q. But are there any other specific purposes of the
 15 bill?
 16 A. My testimony involves the general purpose of the
 17 bill. And I stated the general purpose of the bill.
 18 Q. But I am allowed to ask you about the legislative
 19 purpose so I think that would include any legislative
 20 purpose of Senate Bill 14?
 21 A. Well, just general purpose and legislative
 22 purpose are synonymous in this view and that's to
 23 prevent voter fraud and protect the integrity of the
 24 ballot.
 25 Q. Okay. That's good. Can you tell me, based on

210

1 the public record, how Senate Bill 14 prevents fraud?
 2 MR. SWEETEN: Hold on a minute. How it
 3 prevents fraud. No, he's not going to answer that.
 4 That's subject to the legislative privilege.
 5 BY MS. MARANZANO:
 6 Q. Was there testimony on the public record about --
 7 MR. SWEETEN: Counsel, let's go to the order
 8 here.
 9 MS. MARANZANO: Yeah.
 10 MR. SWEETEN: Specifically, we are on
 11 Page 16 of 16 of the court's order. And that provision
 12 order says, "Further ordered that questions of
 13 depositions shall comply with the terms and restrictions
 14 set forth in this order."
 15 MS. MARANZANO: Yes.
 16 MR. SWEETEN: Yesterday, in two depositions
 17 held at this building, we had a sitting representative
 18 sit and answer these same types of questions until 7:00
 19 p.m. in violation of that provision of the court order.
 20 We had another witness, Representative Aliseda, who was
 21 here until 6:15 p.m. -- no, it was 7:00 because I was
 22 waiting for the attorney to come back so we could visit
 23 about other matters.
 24 Now, we've got an order from the court that
 25 explicitly prohibits and requires that deposition

211

1 questions will comply with the terms and restrictions of
 2 the order. The court has a succession of four orders
 3 carved-out and explicitly told us what the areas of
 4 legislative privilege are. You continue, and I'm not --
 5 I'm using you in the broadest sense because you have
 6 been polite. But your office is continuing to ask
 7 questions in violation of this order. And at some point
 8 this -- in violation of this order, if this conduct
 9 continues we are going to have no other choice but to go
 10 to the court and seek relief from them. Because they
 11 have been clear.
 12 And this type of questioning, where you
 13 continue to ask him matters that are subject to the
 14 privilege, is inappropriate. And is in violation of the
 15 court's order. And I'm going to ask you -- I'm going to
 16 ask you here at 3:00 p.m. on the late afternoon after
 17 Senator Duncan has sat here since 9:30, I'm going to ask
 18 you to rein that in. Because we are now getting to a
 19 point where we have our sitting representatives and
 20 senators being -- basically sitting here answering
 21 questions that have been prohibited by the court. And
 22 at some point this has to end.
 23 MS. MARANZANO: Well, Mr. Sweeten our
 24 position is, absolutely, that we are complying with the
 25 court's order and, you know, I have made every effort to

212

1 be very clear with the Senator today that I'm asking him
 2 questions about the public record. We've had exchanges
 3 and there have been times when I have withdrawn
 4 questions. There's been times when you have withdrawn
 5 objections. So, you know, I think we're both making
 6 good faith efforts to comply with the order.
 7 And the -- you know, all the attorneys
 8 representing the defendant in this matter are doing the
 9 same. And it's absolutely our position that we are
 10 complying with this court order.
 11 And, you know, my understanding, and
 12 obviously I wasn't involved in those depositions
 13 yesterday. My understanding is that part of the reason
 14 people were here late was because there were problems
 15 with documents that had nothing to do with questions at
 16 a deposition.
 17 MR. SWEETEN: Well, I would submit a very
 18 different view of things and I have. I've stated it.
 19 I'm simply -- I'm letting you know. And I'm making this
 20 clear on the record, that this has got -- you've got to
 21 tamper this down based upon this order, or we're going
 22 to seek relief from the court.
 23 This is -- yesterday's exercise was in
 24 violation of the court order. And we are starting to
 25 get there here. And I want you to take this very

213

1 seriously that we are doing our best.
 2 We have put these people through seven hours
 3 of depositions. You have taken the limit of time with
 4 these individuals. And this -- at some point this has
 5 to stop, or this has to be reined in, because we're
 6 going to seek redress from the court. With that, I'll
 7 let you continue with your examination of Senator
 8 Duncan. We'll continue -- continue with this exercise.
 9 But please respect the court's order with respect to the
 10 legislative privilege. It is very clear.

11 MS. MARANZANO: I am going to continue. But
 12 I just want to say, I do not appreciate the suggestion
 13 that I am doing anything other than respecting the
 14 Court's order.

15 BY MS. MARANZANO:

16 Q. Senator Duncan, was Senate Bill 14 given an
 17 emergency designation by the governor?

18 A. I believe that the Governor Perry issued an
 19 emergency declaration for legislation related to voter
 20 identification.

21 Q. Did you or did anyone in your office have
 22 communications about Senate Bill 14's emergency
 23 designation?

24 A. With whom?

25 Q. With anybody.

214

1 A. Not that I'm aware of.

2 Q. What are the consequences of a bill having this
 3 designation, this emergency designation?

4 A. I don't know of any consequences.

5 Q. What does it mean for a bill to be designated as
 6 emergency?

7 A. The only thing it means is that the constitution
 8 requires that you cannot take up a bill or a resolution
 9 of substance prior to the 60th day of a legislative
 10 session. Declaring an issue an emergency allows the
 11 measure to be taken up and considered before the 60th
 12 day.

13 Q. Were there any public statements about why Senate
 14 Bill 14 was given this emergency designation?

15 A. The only public statement that I would be aware
 16 of would be the proclamation by the governor declaring
 17 it an emergency. There may be others by others, but I'm
 18 not aware of them.

19 Q. And in the governor's proclamation, did he give
 20 any explanation as to why he was declaring it an
 21 emergency?

22 A. You know, I don't recall that he really did. I
 23 think -- it's in the journal and I don't remember
 24 exactly what it said. But I don't believe there was any
 25 statement with regard to considerations in the journal.

215

1 Whether he made other statements I don't know.

2 (Exhibit No. 531-532 was marked.)

3 BY MS. MARANZANO:

4 Q. Senator, I am showing you what we're marking for
 5 the record as deposition Exhibit 531 and 532. Can you
 6 take a look at these and tell me if you recognize them?

7 A. I recognize -- I don't know if I've seen 531
 8 before. I assume that I've seen 532 because it's
 9 addressed to me by Senator Van de Putte.

10 Q. And deposition Exhibit 532, is that a letter from
 11 Lieutenant Governor Dewhurst?

12 A. It's a letter from Governor Dewhurst to --
 13 Lieutenant Governor Dewhurst to Senator Birdwell.

14 Q. And dated January 20, 2011?

15 A. Correct.

16 Q. Do you recall getting a letter similar to this
 17 yourself?

18 A. No. But I may have.

19 Q. Do you see that in -- do you see that it says
 20 that, "This Lieutenant Governor's intent to recognize
 21 Senator Robert Duncan for a motion to resolve the Senate
 22 into a Committee of the Whole to consider Senate Bill
 23 14"?

24 A. Yes.

25 Q. And do you see it says that's going to happen on

216

1 Monday January 24, 2011?

2 A. Yes.

3 Q. Can you take a look at Exhibit -- deposition
 4 Exhibit 532?

5 A. Yes, ma'am.

6 Q. And can you look at the second paragraph for a
 7 minute? Do you see that that's referring to a letter
 8 from the Lieutenant Governor?

9 A. Okay.

10 Q. Do you see that it states that the Lieutenant
 11 Governor circulated a letter on Thursday after most
 12 senators had left for the weekend? And it stated that
 13 the Senate was going to convene as Committee of the
 14 Whole four days later to consider voter ID legislation.
 15 Do you see that?

16 A. I see her description.

17 Q. Is that your, based on your recollection, do you
 18 believe that that occurred?

19 A. I don't know.

20 Q. You don't have any recollection?

21 A. No. It -- I don't know one way or the other. I
 22 don't recall an issue about this. Although, she did
 23 raise it in a letter to me.

24 Q. Do you recall receiving this letter?

25 A. Let me read it. I believe -- yeah, I remember

217

1 this. I do.
 2 Q. You do remember it?
 3 A. Yes, ma'am.
 4 Q. Did you respond to it?
 5 A. I assume I did. I always respond to Senator Van
 6 de Putte when I can. So I don't know if I did it in
 7 writing or gave her a phone call.
 8 Q. Do you -- do you recall if you disputed the way
 9 she describes the notice that was given in that
 10 paragraph that we were just looking at?
 11 A. I don't recall if I did or not.
 12 Q. As you sit here today, you don't recall if this
 13 is how the notice was provided to members?
 14 A. No, I don't. I remember this letter now. But I
 15 don't know how that happened or why it happened or what
 16 happened, quite frankly.
 17 Q. Did any opponents of Senate Bill 14 make
 18 allegations that minority members of the Senate were
 19 being excluded from participation in the debate because
 20 they weren't given enough notice?
 21 MR. SWEETEN: You can answer as to matters
 22 of the public record.
 23 A. I simply don't remember that specifically. I
 24 know if there's some correspondence to that effect, you
 25 know, there's typically -- I think there was. I think

218

1 this letter right here, basically is some protest of the
 2 speed in which the bill was moving. But other than
 3 that, I don't recall anything.
 4 Q. And you don't recall whether you had a public
 5 response to that?
 6 A. I don't know. I may have. I mean, I typically
 7 would respond to Senator Van de Putte by phone call or
 8 formal letter. Not only this issue, but other issues as
 9 well.
 10 Q. Do you recall that in 2011 there was a similar
 11 rule, that's what we discussed in the 2009 session, that
 12 allowed for voter identification legislation to be
 13 brought to the floor without a two-thirds majority vote?
 14 A. I recall it. I think Senate Rule 5.11 remained
 15 in place.
 16 Q. So Section D of Rule 5.11 would have been the
 17 same in 2011 as it was in 2009?
 18 A. I don't believe there were any conceptual changes
 19 in it.
 20 Q. Would it refresh your recollection to look at the
 21 rule?
 22 A. It would be helpful to look at both the rules.
 23 I've got one here. Well, I've got the original exhibit
 24 you previously provided.
 25 Q. I'm going to give you.

219

1 (Exhibit No. 533 was marked.)
 2 BY MS. MARANZANO:
 3 Q. I'm going to give you what we're marking as
 4 deposition Exhibit 533, which I'll represent to you is
 5 from the 2011 Senate rules. And do you see rule 5.11 D
 6 on Page 24?
 7 A. Okay.
 8 Q. Do they appear to be the same to you?
 9 A. They appear to be substantially the same, if not
 10 identical.
 11 Q. Senator, based on the public record, can you tell
 12 me why you were the person who introduced the resolution
 13 to bring Senate Bill 14 to the Committee of the Whole?
 14 MR. SWEETEN: Don't answer the question. It
 15 would call for you to reveal matters of legislative
 16 privilege, of why it would relate to mental processes
 17 about the legislative process. If there's something
 18 expressed specifically on the public record you can
 19 refer to.
 20 BY MS. MARANZANO:
 21 Q. Let me actually ask you this. Is there a
 22 procedure by which there's a process for who would bring
 23 a bill to the floor -- or who would bring a bill to the
 24 Committee of the Whole, is that a set procedure in the
 25 Senate?

220

1 A. No.
 2 Q. Okay. Is that a decision that the Lieutenant
 3 Governor makes?
 4 A. Yes.
 5 Q. And did you preside over the Committee of the
 6 Whole's consideration of Senate Bill 14?
 7 A. Yes.
 8 Q. And that was the same rule, and it contained the
 9 same responsibilities as what you testified to in 2009?
 10 A. Yes.
 11 Q. During the debate and the consideration by the
 12 Committee of the Whole, did anybody raise public
 13 concerns about the impact Senate Bill 14 would have on
 14 minority voters?
 15 A. Generally those issues were discussed. An
 16 accurate account would be contained in the record.
 17 Q. And do you recall -- actually we'll get to that
 18 in a second. Never mind. Have you had occasion to
 19 review the Georgia and Indiana voter identification
 20 laws?
 21 MR. SWEETEN: Objection; asked and answered
 22 And don't reveal your mental processes when you're
 23 evaluating legislation, your motivations that would be
 24 subject to legislative privilege. Instruct not to
 25 answer if your answer would reveal that.

221

1 A. The answer is, I have reviewed materials that
2 relate to the Indiana an Georgia laws and those cases.
3 I can't recall if I've actually read the cases verbatim
4 or -- and I know I have not done an analysis of those
5 cases verbatim.

6 Q. (By Ms. Maranzano) Is out your belief, as you
7 sit here today, that the Georgia identification law is
8 similar to Senate Bill 14?

9 A. I can't answer that.

10 MR. SWEETEN: Okay. I was going to say if
11 this is going to reveal your legislative processes about
12 Senate Bill 14 don't answer it. But if you don't -- if
13 it's not.

14 A. I can't answer it for two reasons. One, it would
15 require analysis. And number two is I haven't -- I'm
16 not prepared give you an accurate answer on that. It
17 would have to be contained -- it would have to be
18 something contained in the record.

19 Q. (By Ms. Maranzano) Are you familiar with the
20 Indiana identification law?

21 A. Generally.

22 MS. MARANZANO: Can you mark this? Thank
23 you.

24 (Exhibit No. 534 was marked.)

25 BY MS. MARANZANO:

222

1 Q. Senator, I'm showing you what we're marking as
2 deposition Exhibit 534. Can you take a look at this?
3 Does this appear to be the Indiana voter identification
4 law?

5 A. The title of this document is Public Law
6 109-2005. And it appears to be an excerpt from the
7 Indiana code. I don't know the authenticity of this. I
8 assume you're representing it to be an authentic version
9 of the law and I have no reason to doubt that.

10 Q. Can you take a look at Page 2015 for me, please?
11 And I want to direct your attention to the Subsection C,
12 but if you need to look at the preceding page it might
13 give you the context for that.

14 A. Okay.

15 Q. Do you see that a voter who cast a provisional
16 ballot is able to execute an affidavit saying they're
17 indigent and their provisional ballot would be counted?

18 A. Yes.

19 Q. And they would not have to show the required
20 identification?

21 A. Yes.

22 Q. Do you recall public discussions or discussions
23 on public record about this portion of the Indiana code
24 during the debate of Senate Bill 14?

25 A. I believe there was.

223

1 Q. Do you recall what those discussions entailed?

2 A. No. You would have to refer to the record for an
3 accurate description.

4 Q. Do you recall introducing any amendments to
5 Senate Bill 14?

6 A. Do I recall?

7 Q. Uh-huh.

8 A. Introducing amendments, I did not introduce
9 amendments that I recall.

10 MS. MARANZANO: Could we have this marked?
11 (Exhibit No. 535 was marked.)

12 BY MS. MARANZANO:

13 Q. I'm showing you what we're marking as deposition
14 Exhibit 535. Can you take a look and tell me if you
15 recognize this?

16 A. Well, this is apparently a transcription of the
17 hearing on Senate Bill 14, January 26, 2011.

18 Q. And can you look on that first page by Duncan and
19 take a look at what -- at that paragraph?

20 A. Yes. That indicates that I apparently introduced
21 amendment 40.

22 Q. Does that refresh your recollection?

23 A. Well, yeah. Because apparently Senator Davis had
24 an amendment. And now that I'm looking at this it
25 appears that, according to the record, I was amending

224

1 her amendment.

2 Q. I'm sorry. You were amending her amendment?

3 A. I believe that's what this is.

4 Q. And can you tell me, based on public discussions,
5 why you thought that was a provision that you wanted to
6 add to Senate Bill 14?

7 MR. SWEETEN: Don't answer the question. It
8 calls for matters of legislative privilege. You're
9 asking why in his thought process.

10 BY MS. MARANZANO:

11 Q. Did you have any discussions on the public record
12 about this amendment?

13 MR. SWEETEN: You can answer.

14 A. Yes.

15 Q. (By Ms. Maranzano) Do you recall the substance
16 of those discussions?

17 A. Those discussions were stated in the record.

18 Q. And is that the record that's right here in front
19 of us?

20 A. It is.

21 Q. And do you see that, in that paragraph that we
22 were looking at, you point out that this amendment is
23 very similar to, if not identical to, the provisions of
24 Indiana law? Do you see that? And then it says, "and
25 it would be a fail safe privilege for those persons,"

225

1 which I assume you're referring to indigent persons?

2 A. That's what -- well, I will refer you to the
3 record, if that accurately states what I said, I assume.

4 Q. Can you tell me what the purpose of this
5 amendment was?

6 MR. SWEETEN: Don't answer the question.
7 You can give general purpose of legislation. Don't go
8 into the purpose of the amendment, legislative
9 privilege.

10 BY MS. MARANZANO:

11 Q. Can you tell me if this provision was included in
12 the final version of Senate Bill 14?

13 A. According to the record it was adopted, but I
14 don't know -- and I assume that it was in the engrossed
15 version, but I don't know. You would have to go to the
16 record.

17 Q. Well, do you want to take a look at Senate Bill
18 14 and tell me if you see it in the bill?

19 A. In the enrolled and signed version?

20 Q. Uh-huh.

21 A. The bill will speak for itself I'm sure, but --
22 and that would have been -- I'm trying to see where that
23 was amended. But I don't recall that it made it through
24 the House. But let me look and see.

25 Q. Let me direct your attention to that paragraph

227

1 A. I don't remember any. But that doesn't -- I
2 could have. I just don't remember any specific
3 amendments. When this bill came back over we were in a
4 lot of other different issues. But I don't remember
5 being told specifically that it came out. And I just
6 now remembered that we put the amendment on. So I don't
7 recall being involved at that stage of any decision to
8 remove the amendment.

9 Q. Did you have any communication with anybody about
10 whether a provision like this, the exemption of for
11 indigency, would increase the chances that Senate Bill
12 14 would be precleared?

13 MR. SWEETEN: Don't reveal matters of
14 privilege. I think this asks for more than a general
15 subject matter discussion. If you -- so I would
16 instruct you not to answer as phrased. If you want to
17 change the preface of the question, I think we can
18 probably get you and answer that would give you the
19 foundational information you seek.

20 BY MS. MARANZANO:

21 Q. I think you stated previously you don't recall
22 having conversations about this amendment generally?

23 A. Well, apparently I did because I put an amendment
24 on the bill. And as chairman of the committee, I
25 typically work to improve a bill and listen to people.

226

1 that we were just looking at. It points out that this
2 is for individuals who cast a provisional ballot.

3 A. Right.

4 Q. So that might help direct your attention to the
5 portion of Senate Bill 14 about provisional ballots.

6 A. You might remind me of what provision that is.

7 Q. And you said you don't recall that it did make it
8 through. Is that what you said?

9 A. Well, it appears if you're looking at Section
10 60 -- or Section 14 of Senate Bill 14, that -- for
11 amendment No. 40, which was a Senate amendment to Senate
12 Bill did not get in the enrolled version of the bill
13 signed by the governor.

14 Q. Do you know when this provision was removed from
15 the bill?

16 A. No, I do not. You know, you can narrow it down
17 to either in the House or in a conference committee. I
18 don't think this bill went to a conference committee.

19 Q. Do you -- did you have any communications with
20 any other legislators about this amendment -- well, this
21 amendment first of all, at all?

22 A. Not that I recall.

23 Q. So I take it then, you didn't have any
24 conversations about this amendment getting removed from
25 the bill?

228

1 And so obviously there was some reason to put that on
2 the bill. The reasons that are there are stated here.
3 What conversations I had with folks, with other members
4 on this particular amendment were probably based upon
5 Indiana law, as stated in the public record. But my
6 specific conversations with Senator Fraser or others,
7 Senator Davis, I do not recall specifically what they
8 were. To provide you, especially, to provide you with
9 an accurate account of those conversations. The
10 statement contained in the record is my conversation
11 with regard to Amendment 40.

12 Q. Do you recall any of the other amendments that
13 were proposed for Senate Bill 14?

14 A. If I don't recall my own, I probably don't recall
15 the others. But I do recall -- at least I don't think
16 there were amendments in 2009, but I do recall, I
17 thought we did some amendments in 2011 and obviously we
18 did.

19 MS. MARANZANO: Okay. Let's mark this. I'm
20 sorry. Wrong one. Can you mark this?
21 (Exhibit No. 536 was marked.)

22 BY MS. MARANZANO:

23 Q. Senator, I'm showing you what we're marking as
24 deposition Exhibit 536. Do you recognize this?

25 A. Well, I recognize the title, as apparently it's

229

- 1 an excerpt from the Senate journal for January 26, 2011.
 2 Q. And can you take a look at Page 118, and I'm
 3 going to direct your attention to floor Amendment 12.
 4 Do you see that that amendment would have prohibited
 5 state agencies from charging fees for issuance of any
 6 acceptable form of photo identification under Senate
 7 Bill 14, or for underlying documentation that would be
 8 required to obtain such an ID?
 9 A. I believe the provision -- or the amendment poses
 10 a similar concept to what you described.
 11 Q. And do you see below that amendment there's a
 12 recorded motion to table and a vote on that motion to
 13 table?
 14 A. That's correct.
 15 Q. And you voted, according to the public record, in
 16 favor of the motion to table?
 17 A. According to the record, that's how I voted.
 18 Q. Did you take any public position as to how this
 19 amendment would have impeded the goals of Senate Bill
 20 14?
 21 A. I don't recall if I did or not.
 22 Q. You have no recollection?
 23 A. No.
 24 Q. Can you turn to Page 134, Amendment No. 30?
 25 A. Page what?

230

- 1 Q. 130. Do you see floor Amendment No. 30?
 2 A. I see that.
 3 Q. Amendment by Senator Ellis as well as Senator
 4 Rodriguez and Senator Uresti. Can you take a look at
 5 that amendment? Do you see that this amendment would
 6 have required the secretary of State to conduct a study
 7 that would have included information about the number of
 8 eligible voters who were prevented from voting because
 9 of a lack of possessing an identification?
 10 A. I'll only agree to what it says. I'm not --
 11 you're paraphrasing it. And I'm not familiar enough
 12 after two years, after a year, whatever it is, of the
 13 language to agree with your paraphrasing. But I will
 14 agree it is an amendment that requires the Secretary of
 15 State to produce an annual report. And it has specific
 16 requirements with seven subsections of requirements for
 17 the Secretary of State to either collect data or do
 18 analysis and report back to the legislature.
 19 Q. And can you look at Subsection 7, and that
 20 actually requires that "the report include an analysis
 21 by subgroup of whether the enhanced identification
 22 requirements were being accepted to vote, produce a
 23 disparate impact on women, the elderly, persons with
 24 disabilities, students or persons of racial or ethnic
 25 minorities." Is that correct?

231

- 1 A. That's what Subparagraph 7 states, yes.
 2 Q. And can you look below, I think it goes on to the
 3 next page, that there was a motion the table that
 4 amendment?
 5 A. Correct.
 6 Q. And you publicly voted in favor of this motion to
 7 table; is that correct?
 8 A. That's correct.
 9 Q. Did you take -- did you make any public
 10 statements or take a public position about your
 11 opposition of this amendment?
 12 A. I don't recall doing so.
 13 Q. Were there any public statements made about
 14 concerns that a study, such as the one proposed by this
 15 amendment, would actually show there was a disparate
 16 impact on minority voters?
 17 A. I'm confident that whenever floor Amendment 30
 18 was laid out on the Senate floor that the author and the
 19 sponsors of the amendment made certain public statements
 20 regarding -- or in support of the amendment.
 21 Q. And my question was about whether public
 22 statements were made expressing a concern that to do
 23 such a study would show there was a disparate impact?
 24 A. You would have to look at the record to determine
 25 whether or not there were public statement on that. I

232

- 1 don't recall independently.
 2 Q. Can you look at Page 129 for me? And
 3 specifically at floor Amendment No. 29. Do you see that
 4 amendment it requires driver's license offices to be
 5 open until 7:00 p.m. on a weekday during each week and
 6 at least four or more hours on two Saturdays of each
 7 month?
 8 A. I see that.
 9 Q. Do you see below that there's a motion to table
 10 that amendment?
 11 A. Yes.
 12 Q. And you voted in favor of that motion to table?
 13 A. Correct.
 14 Q. And did you take any public position as to how
 15 this amendment would have impeded the goals that you
 16 described earlier of Senate Bill 14?
 17 A. I don't remember if -- whether I did or not.
 18 Probably not.
 19 Q. Did you make any public statements about that?
 20 A. No, I don't think I did.
 21 Q. Do you recall when the Senate passed Senate Bill
 22 14?
 23 A. It was probably in January of 2011 as this
 24 particular -- well, somewhere near the January 26, 2011
 25 proceeding that's reflected in the Senate journal. But

233

1 I don't recall the exact date.
 2 Q. Can you tell me as a general matter, is it
 3 unusual for legislation to be introduced, considered and
 4 passed within two weeks?
 5 A. Not necessarily.
 6 Q. Has that happened -- how many times has that
 7 happened during your time in the Senate?
 8 A. No. My freshman year I introduced the Boll
 9 Weevil. Actually I introduced it, but I didn't even
 10 take it up until the Supreme Court had overruled or had
 11 held an existing law unconstitutional until April 30th.
 12 And I think we headed out of Senate to the House in two
 13 and a half weeks. So it can be done, if it's necessary,
 14 on emergency orders. On orders that are emergency, they
 15 can move fairly quickly depending on the consensus in
 16 the bill. Just depends on all those things. So
 17 generally it's not -- it's -- it's not -- it's -- it
 18 happens -- it can and does happen that legislation moves
 19 fairly quickly.
 20 Q. I'm sorry. I missed the piece of legislation you
 21 worked on?
 22 A. Boll Weevil.
 23 MR. SWEETEN: Boll Weevil.
 24 BY MS. MARANZANO:
 25 Q. Okay.

234

1 A. Actually that's a pretty interesting case.
 2 Q. We'll talk about that off the record. And you
 3 said it depends on the consensus; is that right?
 4 A. Correct.
 5 Q. Is it unusual for a bill that is highly
 6 contentious to pass -- to be introduced, considered and
 7 passed within two weeks?
 8 A. Depends.
 9 Q. And other than this legislation that yourself
 10 mentioned that you worked on, are there other
 11 examples -- during the time you've been in the Senate,
 12 about how many times have you seen this happen?
 13 A. Couldn't tell you. Special orders. Other issues
 14 that come up late in the session that need to be
 15 addressed. So, you know, I couldn't. Just too much to
 16 me. Too long and too much.
 17 Q. Are you familiar with the Conference Committee's
 18 consideration as to Senate Bill 14?
 19 A. Remind me who was on the Conference Committee,
 20 please?
 21 Q. I would have to look it up. I'm not sure I had
 22 that document in front of me. It would refresh your
 23 recollection if you knew if members of the Conference
 24 Committee?
 25 A. Yeah.

235

1 Q. All right. We'll come back to that. Did you
 2 ever have any discussions -- strike that. To the best
 3 of your knowledge, based on public record, did the
 4 legislature take steps to determine whether SB 14 might
 5 disproportionately impact minority voters?
 6 MR. SWEETEN: Don't reveal matters of
 7 legislative privilege. If you can answer the question
 8 without doing so, you can. If you cannot, then instruct
 9 you not to answer.
 10 A. I can't accurately respond to the question based
 11 on independent recollection. I would refer you to the
 12 record.
 13 Q. (By Ms. Maranzano) Okay. Was any part of the
 14 purpose of Senate Bill 14 to decrease the number of
 15 Hispanic voters?
 16 A. No.
 17 Q. Was any part of the purpose of Senate Bill 14 to
 18 decrease the number of any other group of minority
 19 voters?
 20 A. No. The purpose is as I've stated.
 21 Q. Was any part of the purpose of Senate Bill 14
 22 partisan?
 23 A. No. The purpose is as I stated.
 24 Q. Did the purpose of photo ID in Texas evolve
 25 overtime?

236

1 A. I'm not sure I understand that. What do you
 2 mean?
 3 Q. Did the purpose of the photo ID bills that we
 4 talked about in different legislative sessions change?
 5 A. Not that I'm aware of.
 6 MR. SWEETEN: Hold on a second. I think
 7 that you're asking to compare and contrast different
 8 bills from different sessions. I think that the
 9 question is vague. I think it's compound. I also think
 10 that it calls upon him to give you an analysis of how
 11 one bill compares with another which would require him
 12 to write his mental impressions and would be subject to
 13 the legislative privilege. He will testify -- I think
 14 you've asked him all day about the different bills and
 15 what he thought the general purpose was. He has
 16 testified to all of that.
 17 BY MS. MARANZANO:
 18 Q. Are you aware of any legislators making any
 19 statements about illegal aliens voting?
 20 A. No.
 21 Q. Have you ever heard a Texas State legislator who
 22 voted in favor of Senate Bill 14 say it would prevent
 23 racial or ethnic minorities from voting in Texas?
 24 A. No.
 25 MR. SWEETEN: Don't reveal any

237

1 communications you've had with any Senate or staff in
 2 answering these questions.
 3 A. I've had no such communications is what I'm
 4 trying to say. I want to be clear on that.
 5 Q. (By Ms. Maranzano) I didn't hear the very last
 6 thing you said. You said you've had no such --
 7 A. I have not been a party to any such
 8 communications or overheard or heard any such
 9 communications.
 10 Q. Does Senate Bill 14 do anything to address
 11 allegations of fraud in the vote by mail system?
 12 MR. SWEETEN: Don't answer the question.
 13 Requires you to reveal your mental thought processes and
 14 motivations by the voter process.
 15 MS. MARANZANO: I'm just asking him about
 16 the text of the bill.
 17 MR. SWEETEN: You're asking if the text of
 18 the bill --
 19 MS. MARANZANO: Addresses voter fraud and
 20 vote by mail.
 21 MR. SWEETEN: You can answer it based upon
 22 the text.
 23 A. The text of the bill is to achieve the general
 24 purpose of the bill, which is to enhance voter -- their
 25 ballot box integrity and prevent fraud.

238

1 Q. (By Ms. Maranzano) So I'm just asking if
 2 anything in the bill, based on the face of the bill,
 3 addresses vote by mail voter fraud?
 4 A. I've answered the question to the best of my
 5 ability.
 6 Q. Okay.
 7 A. Given -- go ahead. Re-ask the question.
 8 Q. I know we talked about that the purpose of Senate
 9 Bill 14 is about integrity of the electoral system and
 10 voter fraud. And I'm just wondering if the specific
 11 area of vote by mail fraud is addressed by Senate Bill
 12 14, based on the face of the bill?
 13 MR. SWEETEN: But I think your question is
 14 asking for him to give you the potential effect of
 15 Senate Bill 14 and would therefore, to some extent could
 16 reveal his mental processes, opinions and thoughts about
 17 the legislation. So to some -- if to that extent I
 18 would instruct you not to reveal it if it implements
 19 matters of legislative privilege.
 20 A. I don't know, sitting here today. I believe that
 21 voter -- that mail in ballots is covered under other
 22 legislation and not necessarily Senate Bill 14, if my
 23 recollection is correct.
 24 Q. (By Ms. Maranzano) Do you believe that -- well,
 25 strike that. Based on the face of Senate Bill 14, does

239

1 it do anything in terms of the goals that you've stated
 2 that is not already covered by federal or State law?
 3 MR. SWEETEN: Don't answer that. Calls for
 4 matters of legislative privilege. Instruct not to
 5 answer.
 6 BY MS. MARANZANO:
 7 Q. Do you know how somebody -- do you know what
 8 forms of identification a voter registration applicant
 9 in Texas needs to show under the current system to
 10 register to vote?
 11 A. I know there are -- there are a -- there's a
 12 laundry list of items that a voter needs to show. I
 13 couldn't recite them specifically for you right now.
 14 You would have to show me the statute.
 15 Q. Is there anything in the public record about the
 16 insufficiency of that current system, in terms of the
 17 identification of voter registration an applicant needs
 18 to show?
 19 A. If there is it would have certainly been stated
 20 in the debate of Senate Bill 362 or Senate Bill 14.
 21 Q. Can you give me just a minute? I think I'm just
 22 about done. I just want to go through my notes real
 23 fast.
 24 A. Sure.
 25 (Brief recess.)

240

1 BY MS. MARANZANO:
 2 Q. Back on the record. Senator, do you know how
 3 many investigated incidents of in person voter fraud
 4 have occurred in the state of Texas in the last
 5 20 years?
 6 A. I don't have a statistic available to me at this
 7 time to give you an accurate answer on that.
 8 Q. Do you know how many convictions for in person
 9 voter fraud have been obtained in the last 20 years in
 10 the State of Texas?
 11 A. I don't have that information available to me at
 12 this time.
 13 Q. Do you know if those statistics were part of the
 14 public debate on Senate Bill 14?
 15 A. If they were, they would be in the record.
 16 Q. At any time since the passage of Senate Bill 14,
 17 have you come to believe that it was passed with
 18 discriminatory purpose?
 19 A. No.
 20 Q. Have you come to believe it was passed with a --
 21 at any time since the passage of Senate Bill 14, have
 22 you come to believe that it would have a discriminatory
 23 impact on minority voters?
 24 A. No.
 25 Q. If called to testify at trial, will you testify

241

1 that Senate Bill 14 has no discriminatory purpose?
 2 A. Yes.
 3 Q. And will you testify that it has no
 4 discriminatory effect?
 5 A. Yes.
 6 Q. Are there any answers that you gave today that
 7 now you would like to change?
 8 A. Other than the fact that I forgot that I had
 9 offered an amendment. That's the only one I think. But
 10 I just simply again, don't typically offer those kind of
 11 amendments. But that was corrected and I remember --
 12 once you showed it to me I remembered it. It did
 13 refresh my memory.
 14 Q. Is there anything about earlier today you
 15 couldn't recall that you are now able to recall?
 16 A. No. That was the main thing.
 17 Q. Okay. I'm now going to turn the questioning over
 18 to Mr. Brazil. As I mentioned earlier, we are going to
 19 leave this deposition open because we believe there may
 20 be some documents that the court has ordered to be
 21 produced that have not yet been produced. So for the
 22 moment we're leaving the deposition open?
 23 A. Thank you.
 24 MS. MARANZANO: Thank you.
 25

242

1 EXAMINATION
 2 BY MR. BRAZIL:
 3 Q. Senator, I just have a few questions and I'll do
 4 it from here. So if I don't speak loud enough just ask
 5 me to speak up. Okay?
 6 A. Yes, sir.
 7 Q. I only have about four areas to briefly cover so
 8 I'll jump around and if I lose you, just say so. Fair
 9 enough?
 10 A. Yes, sir.
 11 Q. I believe you said earlier this morning that your
 12 Senatorial district is 36 counties?
 13 A. 46.
 14 Q. I'm sorry?
 15 A. 46.
 16 Q. 46. Do all 46 of your counties have DPS offices?
 17 A. I do not know the -- I couldn't accurately give
 18 you and answer right now. I don't know that they all
 19 do. I'm not sure. I can't tell you today.
 20 Q. I think you saw in the public record that 77 of
 21 the 254 counties do not have DPS offices. Do you recall
 22 that?
 23 A. I don't recall those specific numbers.
 24 Q. And you are not sure how many of your counties do
 25 or do not have offices?

243

1 A. I haven't -- I haven't looked at that.
 2 Q. Did your office do any independent polling of
 3 your constituents on the issue of voter ID?
 4 A. I don't believe.
 5 MR. SWEETEN: Hold on a minute. Don't
 6 answer questions that are subject to the legislative
 7 privilege. So that would -- potentially reveal thought
 8 process, mental impressions about legislation. So don't
 9 answer if it would to that.
 10 BY MR. BRAZIL:
 11 Q. Well, let me make my question more specific. Did
 12 your office send out any mailers, request any e-mails
 13 from your constituents, anything of that sort, in the
 14 public domain about voter ID?
 15 MR. SWEETEN: That sounds like a public
 16 statement so that would be -- you can go ahead and
 17 testify.
 18 A. I don't remember doing that. We don't typically
 19 do those sorts of mailers to our constituent.
 20 Q. (By Mr. Brazil) Did your staff ever keep records
 21 of the telephone calls from your constituents, pro or
 22 con, against the voter ID bill?
 23 A. I don't know if they did on that bill. We've
 24 done it before on other bills, but I couldn't tell you
 25 whether or not we had a log on that.

244

1 Q. Did you attend any, what we call town meetings,
 2 anything of that sort where you specifically discussed
 3 the voter ID bill?
 4 A. I'm sure I did.
 5 Q. Do you recall anything specific, any group that
 6 you addressed or invited to address?
 7 A. No. Generally, we have a fairly by-partisan
 8 group of people that come to our town hall meetings in
 9 these rural counties, even in Lubbock and other areas.
 10 So I typically and generally speak about a number of
 11 issues that were considered during the legislative
 12 session and/or that we are considering or thinking about
 13 considering. And -- but I never have -- I don't recall
 14 ever having a specific town hall meeting just dealing
 15 with voter ID. There's a lot of other issues that we
 16 generally cover in those types of meetings.
 17 Q. Did you ever -- were you ever invited to speak
 18 publicly to a group just on the issue of voter ID?
 19 A. I don't remember if I did. If I did I didn't do
 20 it.
 21 Q. Have you seen any independent studies regarding
 22 alleged voter fraud in Texas?
 23 MR. SWEETEN: Don't reveal your thoughts and
 24 mental processes regarding legislation. That would be
 25 legislative -- that would be subject to the legislative

245

1 privilege.
 2 MR. BRAZIL: How would that be privileged?
 3 Are you contending that somehow he got some secret
 4 information or something that's not public? Some
 5 independent study that he received that the public
 6 didn't receive?
 7 MR. SWEETEN: What I'm saying is that the
 8 Senator's thought process, his motivation, his analysis
 9 related to any legislation, would be subject to the
 10 legislative privilege. And I think your question asks
 11 him to reveal his analysis about legislation,
 12 potentially to divulge conversations that he's had that
 13 would be subject to the privilege and therefore, that
 14 would be a matter of legislative privilege. That's what
 15 I'm saying.
 16 BY MS. MARANZANO:
 17 Q. Well, my question was very specific. Have you
 18 seen any independent studies of alleged voter fraud in
 19 Texas?
 20 MR. SWEETEN: You can reveal matters of
 21 public record. Don't reveal matters of privilege.
 22 A. The investigations related to voter fraud or that
 23 I have seen are those that are contained in the public
 24 record of the Senate on this issue.
 25 Q. (By Mr. Brazil) Okay. Do you recall whether or

246

1 not the public record contains any study by an
 2 independent agency, such as a university or some entity,
 3 that's been hired independent of the legislature on
 4 alleged voter fraud?
 5 A. If there is such study that it was included in
 6 the record either on Senate Bill 362 or the interim
 7 study that we did, or on Senate Bill 14.
 8 Q. I think you've already said you're not aware of
 9 the number of prosecutions for illegal voting or voter
 10 fraud in Texas over the last ten years. Is that fair?
 11 A. I couldn't give you the numbers.
 12 Q. Did I here you say that Amendment No. 40, floor
 13 Amendment No. 40, did not make it into the final bill
 14 that was signed into law?
 15 A. Yes.
 16 Q. Okay. And did you say that the Senate Bill did
 17 or did not go to Conference Committee?
 18 A. It apparently did. And counsel's asked me about
 19 that. But I'm not -- I don't recall any deliberations
 20 in regard to the Conference Committee, other than we had
 21 a Conference Committee. I don't believe I was on the
 22 Conference Committee.
 23 Q. Okay. But somewhere in conference, floor
 24 Amendment No. 40 was removed?
 25 A. I don't know that to be a fact. I know it was

247

1 removed, but I don't know where it was removed.
 2 Q. And you don't know, I assume, who removed it?
 3 A. Correct.
 4 Q. Did you serve on any committees or have you ever
 5 served on any committee that specifically investigated
 6 alleged voter fraud in Texas?
 7 A. The only -- the interim study that we did in 2006
 8 had a charge that reflected that we were to look into
 9 and study the voter fraud. You can look at how it's
 10 specifically worded. That's the only committee that
 11 I've worked on or served on where that issue that was
 12 taken up, I believe. I don't think any other committee
 13 I've served on has taken that issue.
 14 Q. Have you served on any committee that
 15 specifically investigated the effect the voter ID bill
 16 would have on any group of the voting population. For
 17 example, the elderly, minorities. Have you served on
 18 any committee that specifically investigated what effect
 19 this bill may have on their voting?
 20 MR. SWEETEN: Don't reveal any analysis
 21 regarding legislation, nor factual information that you
 22 did or did not consider in supporting or opposing a
 23 bill. That would be subject to a legislative privilege.
 24 A. The studies or -- that would relate to your
 25 question would be the interim study that was a part of

248

1 the charge for the State Affairs Committee in 2006.
 2 Other than that, I don't recall anything.
 3 Q. I think you said earlier that Senate Bill 14 was
 4 to -- I'm trying to quote you, "ensure voter and ballot
 5 integrity." Is that correct?
 6 A. I think ballot integrity is more accurate.
 7 Q. Okay. I have reviewed, I think on the record and
 8 many of the depositions that have been taken in this
 9 case, Senator. Can you point to any area of the record
 10 going back, you know, five or six years where there's
 11 any real substantial evidence statewide voter fraud in
 12 Texas?
 13 MR. SWEETEN: Don't reveal -- don't answer
 14 the question. It would require you to reveal matters of
 15 legislative privilege. Straight out of the order that
 16 would include what factual information a legislator did
 17 or did not consider in supporting or opposing a bill.
 18 That's legislatively privileged.
 19 A. I'll follow counsel's advice on this.
 20 Q. (By Mr. Brazil) Well, I think my question
 21 basically was what was in the public domain, the
 22 hearings, the record, if we stay in that vein, if we
 23 stay in that train of thought, can you -- what in your
 24 opinion is the most outstanding evidence that you
 25 believe supports this allegation of voter fraud in

249

1 Texas?

2 MR. SWEETEN: Don't answer the question.

3 That calls for matters of legislative privilege. You're

4 asking him to weigh the evidence which is part of his

5 analysis in considering legislation. You're asking for

6 him to say what's the most -- what's the most relevant

7 evidence. And that is very clearly asking for his

8 mental impressions and thoughts about a bill. And

9 instruct you not to answer on that basis.

10 BY MS. MARANZANO:

11 Q. Can you point to anything in the public record

12 that indicates substantial voter fraud in Texas?

13 MR. SWEETEN: Same instruction.

14 MR. BRAZIL: I'm sorry?

15 MR. SWEETEN: Same instruction.

16 MR. BRAZIL: So you're contending that the

17 privilege covers what's in the public record. Is that

18 what you're stating?

19 MR. SWEETEN: I didn't state that. I

20 said --

21 MR. BRAZIL: Let me ask him again.

22 MR. SWEETEN: No, let me finish my

23 statement. You're asking him what was substantial

24 evidence, which goes to his mental processes. Now,

25 remember the court said that what factual information a

250

1 legislator did or did not consider in supporting or

2 opposing a bill is part of the legislative privilege.

3 So I'm instructing him that the court order and the

4 legislative privilege covers the question that you're

5 asking. And I'm instructing him not to answer the

6 question as posed.

7 BY MR. BRAZIL: Okay. Well --

8 MR. SWEETEN: You can -- if you want to ask

9 him was there evidence or an issue came up in the public

10 record, I don't have a problem with it. When you start

11 asking him what was substantial, how did he weigh it,

12 that goes to his mental processes. He's not answering

13 that question.

14 BY MR. BRAZIL:

15 Q. Was there any evidence in the public record, in

16 your opinion, to support the allegation of voter fraud

17 in Texas?

18 MR. SWEETEN: I think that's -- it's the

19 same for the same reason that question is inferred. He

20 can refer to evidence in the public record that existed.

21 He's not going to talk about what was more or less

22 important to him. He can talk about what occurred in

23 the public record. That is legislatively privileged.

24 Instruction not the answer.

25 BY MR. BRAZIL:

251

1 Q. What occurred in the public record that supported

2 the allegation of voter fraud?

3 MR. SWEETEN: It's the same instruction.

4 It's the same question.

5 BY MR. BRAZIL:

6 Q. Would you agree with me that there's nothing in

7 the public record to support the allegation of voter

8 fraud in Texas?

9 MR. SWEETEN: Don't answer the question.

10 The question ask for what was your support for a certain

11 issue that calls for matters of the legislative

12 privilege.

13 BY MR. BRAZIL:

14 Q. Who put on -- or presented evidence in the public

15 record of voter fraud in Texas?

16 A. The record I think reflects that in 2006 there

17 was evidence in the interim committee. I do not recall

18 specifically who put on evidence. I do believe the

19 Attorney General's office did testify in 2009 and also

20 2011 with regard to those issues. I would refer you to

21 the record for an accurate account of their testimony.

22 Q. Do you remember how many specific instances of

23 voter fraud they presented?

24 A. I would refer you to the record for an accurate

25 recollection of that.

252

1 Q. Did you serve on any committee that specifically

2 investigated what segment of the population would be

3 most affected by this bill?

4 MR. SWEETEN: Objection. Calls for matters

5 of legislative privilege.

6 BY MR. BRAZIL:

7 Q. Did any committee you serve on investigate that

8 publicly?

9 A. The Senate Committee on State Affairs in 2006

10 carried out its assignment under its charge as stated in

11 the public record. And I will refer you to that record.

12 The Senate Committee of the Whole in 2009, 2011 I

13 believe, the public record reflects a discussion of

14 those issues. I'll refer you to the record for those --

15 for the...

16 Q. There was a lot of discussion and a lot of

17 questions about how this bill progressed and the rules

18 and what rules were changed, et cetera. If we just look

19 at this legislative session, how many bills were handled

20 in a similar manner to Senate Bill 14?

21 MR. SWEETEN: Objection; compound. You can

22 answer based on matters of public record.

23 A. I don't recall that there were any other

24 committee -- or any other bills that were considered by

25 a Committee of the Whole to that extent it would have

<p style="text-align: center;">253</p> <p>1 been different.</p> <p>2 Q. (By Mr. Brazil) What was the urgency of this</p> <p>3 bill? What was the emergency? What precipitated the</p> <p>4 need for this type of bill and the way was handled?</p> <p>5 MR. SWEETEN: Objection; calls for matters</p> <p>6 of legislative privilege. Don't answer the question.</p> <p>7 BY MR. BRAZIL:</p> <p>8 Q. Is there anything in the public record that you</p> <p>9 can point to that would support the urgency or the</p> <p>10 emergency or the special treatment of this bill?</p> <p>11 MR. SWEETEN: Objection. He's asking you to</p> <p>12 find evidence that supports something that calls for</p> <p>13 your mental impressions or thoughts about legislation.</p> <p>14 Don't answer the question as posed.</p> <p>15 MR. BRAZIL: I'll pass the witness.</p> <p>16 MR. SWEETEN: I have no questions for the</p> <p>17 witness. We'll reserve questions to the time of trial.</p> <p>18 (Deposition concluded.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">255</p> <p>1 I, ROBERT DUNCAN, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4 ROBERT DUNCAN</p> <p>5 THE STATE OF TEXAS)</p> <p>6)</p> <p>7 COUNTY OF _____)</p> <p>8 Before me, _____, on this day</p> <p>9 personally appeared ROBERT DUNCAN, known to me (or</p> <p>10 proved to me under oath or through</p> <p>11 (description of identity card or other document) to be</p> <p>12 the person whose name is subscribed to the foregoing</p> <p>13 instrument and acknowledged to me that they executed the</p> <p>14 same for the purposes and consideration therein</p> <p>15 expressed.</p> <p>16 Given under my hand and seal of office this ____</p> <p>17 day of _____, ____.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">NOTARY PUBLIC IN AND FOR THE STATE OF</p>
<p style="text-align: center;">254</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 RE: STATE OF TEXAS VS. HOLDER</p> <p>3</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">256</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF COLUMBIA</p> <p>3 STATE OF TEXAS)</p> <p>4)</p> <p>5 VS.) NO. 12-CV-128</p> <p>6) (DST, RMC, RLW)</p> <p>7)</p> <p>8 ERIC H. HOLDER, JR.,)</p> <p>9 In his official)</p> <p>10 Capacity as Attorney)</p> <p>11 General of the United)</p> <p>12 States, ET AL)</p> <p>13</p> <p>14 *****</p> <p>15 CERTIFICATE FROM THE</p> <p>16 ORAL DEPOSITION OF</p> <p>17 ROBERT DUNCAN</p> <p>18 JUNE 7, 2012</p> <p>19</p> <p>20 *****</p> <p>21 I, Janalyn Reeves, a Certified Shorthand Reporter</p> <p>22 in and for the State of Texas, do hereby certify that</p> <p>23 the foregoing deposition is a full, true and correct</p> <p>24 transcript;</p> <p>25 That the foregoing deposition of ROBERT DUNCAN, the</p> <p>Witness, hereinbefore named was at the time named, taken</p> <p>by me in stenograph on June 7, 2012, the said Witness</p> <p>having been by me first duly cautioned and sworn to tell</p> <p>the truth, the whole truth, and nothing but the truth,</p> <p>and the same were thereafter reduced to typewriting by</p> <p>me or under my direction. The charge for the completed</p> <p>deposition is \$_____ due from Defendant.</p> <p>() That pursuant to the Federal Rules of Civil</p> <p>Procedure, the Witness shall have 30 days after being</p>

<p style="text-align: center;">1</p> <p>343641 eb</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS, * Plaintiff, * VS. * ERIC H. HOLDER, JR., in his * official capacity as Attorney * General of the United States, * Defendant, * ERIC KENNIE, et al, * Defendant-Intervenors, * TEXAS STATE CONFERENCE OF NAACP * CASE NO. BRANCHES, et al, * 1:12-CV-00128 Defendant-Intervenors, * (RMC-DST-RLW) TEXAS LEAGUE OF YOUNG VOTERS * THREE-JUDGE COURT EDUCATION FUND, et al, * Defendant-Intervenors, * TEXAS LEGISLATIVE BLACK CAUCUS, * et al, * Defendant-Intervenors, * VICTORIA RODRIGUEZ, et al * Defendant-Intervenors. *</p> <p style="text-align: center;">TELEPHONIC DEPOSITION OF SENATOR RODNEY ELLIS VOLUME 1 UPON RECEIPT OF SIGNATURE, THE ORIGINAL OF THIS DEPOSITION WILL BE IN THE CUSTODY OF:</p> <p style="text-align: center;">Patrick K. Sweeten, Esquire Office of the Attorney General of Texas P.O. Box 12548 (78711-2548) 209 West 8th Street, 8th Floor Austin, Texas 78701</p> <p>Date Edith A. Boggs, CSR</p> <p>6-22-12 HOUSTON, TEXAS</p>	<p style="text-align: center;">3</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3</p> <p>4 ATTORNEY FOR PLAINTIFF, STATE OF TEXAS:</p> <p>5</p> <p>6 Office of the Attorney General of Texas P.O. Box 12548 (78711-2548) 209 West 8th Street, 8th Floor Austin, Texas 78701 By: Patrick K. Sweeten, Esquire (512) 936-1307 patrick.sweeten@oag.state.tx.us</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 ATTORNEY FOR DEFENDANT, HOLDER, ET AL:</p> <p>13</p> <p>14 U.S. Department of Justice 950 Pennsylvania Avenue, NW NWB - Room 7202 Washington, DC 20530</p> <p>15</p> <p>16 By: Jennifer Lynn Maranzano, Esquire (Present telephonically) (202) 305-7766 jennifer.maranzano@usdoj.gov</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 DEPOSITION OF SENATOR RODNEY ELLIS</p> <p>9</p> <p>10</p> <p>11 DEPOSITION AND ANSWERS of SENATOR RODNEY ELLIS, taken</p> <p>12 before Edith A. Boggs, a certified shorthand reporter in</p> <p>13 Harris County for the State of Texas, taken at the</p> <p>14 offices of State Senator Rodney Ellis, 440 Louisiana,</p> <p>15 Suite 575, Houston, Texas, on the 22nd day of June,</p> <p>16 2012, between the hours of 2:04 p.m. and 5:11 p.m.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p>1 A P P E A R A N C E S (Continued)</p> <p>2</p> <p>3</p> <p>4 ATTORNEY FOR THE KENNIE INTERVENORS:</p> <p>5</p> <p>6 Brazil & Dunn, LLP 4201 Cypress Creek Parkway, Suite 530 Houston, Texas 77068</p> <p>7</p> <p>8 By: Chad Dunn, Esquire (281) 580-6310 chad@brazilanddunn.com</p> <p>9</p> <p>10 ALSO PRESENT:</p> <p>11 Mr. David Edmonson Mr. Brandon Dudley</p> <p>12</p> <p>13</p> <p>14 REPORTED BY:</p> <p>15</p> <p>16 Ms. Edith A. Boggs</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: center;">5</p> <p>1 EXAMINATION INDEX</p> <p>2</p> <p>3 QUESTIONS BY PAGE</p> <p>4 Mr. Sweeten 6</p> <p>5</p> <p>6</p> <p>7 INDEX OF EXHIBITS</p> <p>8</p> <p>9 NO. MARKED DESCRIPTION</p> <p>10 1 18 Exhibit 7 - Declaration</p> <p>11 2 31 List of Senators who have waived</p> <p>12 3 78 Transcript of excerpt of Committee</p> <p>13 of the Whole Senate, Tuesday, January 25, 2011</p> <p>14 4 96 Committee of the Whole Senate on</p> <p>15 Redistricting, Ethics and Elections, Tuesday, April 13,</p> <p>16 1993</p> <p>17 5 96 Committee of the Whole Senate on</p> <p>18 Redistricting, Ethics and Elections, Tuesday, April 13,</p> <p>19 1993, excerpt of Ratliff Personal Privilege/Ellis</p> <p>20 Response</p> <p>21 6 96 SR 521 Senate Committee Report -</p> <p>22 Bill Text</p> <p>23 7 112 Senate Journal - Monday, May 9,</p> <p>24 2011</p> <p>25</p>	<p style="text-align: center;">7</p> <p>1 A. That's fair.</p> <p>2 Q. Okay. Also, she can't take down nods of the</p> <p>3 head, uh-huhs or huh-uhs. So, we have to answer</p> <p>4 verbally.</p> <p>5 Another thing is we don't want to talk over each</p> <p>6 other because when we read the transcript at a later</p> <p>7 time, it will be difficult for us to understand what we</p> <p>8 were saying. So, if you would let me finish my</p> <p>9 question, I will endeavor to let you finish your answer,</p> <p>10 and then we can have a clean record of this discussion.</p> <p>11 Also, if any answers that you give today --</p> <p>12 you're under oath, obviously, and there are rules with</p> <p>13 respect to perjury. And so, I just want to make sure</p> <p>14 you understand that.</p> <p>15 This is a legal proceeding. You're aware of</p> <p>16 that, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. I want to start with a little bit of</p> <p>19 background about you. First is I'd like to know how</p> <p>20 long have you been a Senator?</p> <p>21 A. 22 years.</p> <p>22 Q. Okay. And you started back -- I guess if I do</p> <p>23 the math, it would be 1990?</p> <p>24 A. That is correct.</p> <p>25 Q. And I think you -- you're in Senator District 13;</p>
<p style="text-align: center;">6</p> <p>1 SENATOR RODNEY ELLIS</p> <p>2 was called as a witness and, being first duly sworn by</p> <p>3 the notary, testified as follows:</p> <p>4 EXAMINATION</p> <p>5 Q. (BY MR. SWEETEN) Mr. Ellis, my name is Patrick</p> <p>6 Sweeten. I'm an attorney with the Texas Attorney</p> <p>7 General's Office, and I'm going to be asking you a</p> <p>8 series of questions today.</p> <p>9 First of all, you've had your deposition taken</p> <p>10 before today?</p> <p>11 A. Yes. That's correct.</p> <p>12 Q. And you're an attorney also?</p> <p>13 A. That's right.</p> <p>14 Q. I assume you've taken depositions?</p> <p>15 A. Well, I've come close.</p> <p>16 Q. Well, let me give you a few ground rules that I'd</p> <p>17 like us to follow today to make sure we're</p> <p>18 communicating.</p> <p>19 First is I'm going to be asking you questions</p> <p>20 today. If at any time you do not understand a question</p> <p>21 that I'm asking you, just ask me to rephrase it, and I'm</p> <p>22 glad to do that.</p> <p>23 Otherwise, if you answer the question, then I'll</p> <p>24 assume that you understood the question that was posed</p> <p>25 to you. Is that fair?</p>	<p style="text-align: center;">8</p> <p>1 is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And you've at all times served for Senate</p> <p>4 District 13 as a Senator?</p> <p>5 A. Yes.</p> <p>6 Q. Your predecessor was -- who was your predecessor?</p> <p>7 Craig Washington?</p> <p>8 A. That's correct.</p> <p>9 Q. You've at all times been a Democrat in the</p> <p>10 Senate?</p> <p>11 A. That's correct.</p> <p>12 Q. And your district covers -- and we're sitting in</p> <p>13 your district today. We're in your campaign offices.</p> <p>14 And it covers a large portion of Houston, correct?</p> <p>15 A. You are in the Senate Office. And I do take in</p> <p>16 downtown and the Medical Center, most of the</p> <p>17 universities.</p> <p>18 Q. And can you give me sort of a breakdown of sort</p> <p>19 of the ethnic breakdown of your Senate District, sir?</p> <p>20 A. It is predominantly a minority district, African</p> <p>21 Americans, Hispanics, Asian Americans and white</p> <p>22 population of Houston as well. About 700,000 people.</p> <p>23 Q. About what is the breakdown, if you can do so, if</p> <p>24 you know?</p> <p>25 A. I think it's about 40 percent African American</p>

<p style="text-align: center;">9</p> <p>1 and about 30 percent Hispanic and probably about 7, 8</p> <p>2 percent, maybe close to 10 percent Asian American.</p> <p>3 Q. Now, you're represented here today for purposes</p> <p>4 of this deposition; is that correct?</p> <p>5 A. That is correct.</p> <p>6 Q. And who is your attorney in this case?</p> <p>7 A. Chad Dunn and Jerry Hebert.</p> <p>8 Q. And when did you -- when did they start</p> <p>9 representing you in this case?</p> <p>10 A. I don't know exactly when --</p> <p>11 Q. Okay.</p> <p>12 A. -- but whenever the issue was becoming ripe.</p> <p>13 Q. Okay.</p> <p>14 A. I'm sure I called them pretty quickly.</p> <p>15 Q. Before you contacted counsel, had you had</p> <p>16 discussions with the Department of Justice in this case?</p> <p>17 A. You'd have to check the record to get the exact</p> <p>18 date but I suspect that I -- I'd have to look at my</p> <p>19 notes here but I wrote to the Department of Justice, and</p> <p>20 I suspect I wrote to them -- it would be in the record</p> <p>21 somewhere -- even before I spoke to them about</p> <p>22 representing me. I'd have to check the exact date but I</p> <p>23 would assume around the time that -- let's see. My</p> <p>24 first letter was January 23rd of 2012.</p> <p>25 Q. Okay. You say your first letter, your first</p>	<p style="text-align: center;">11</p> <p>1 check my files and see when the earliest letter is I can</p> <p>2 find.</p> <p>3 Q. And when you wrote them, give me an idea of the</p> <p>4 subject of the correspondence.</p> <p>5 A. I'm concerned about whether or not the</p> <p>6 legislation would have a disparate impact on people of</p> <p>7 color in Texas.</p> <p>8 Q. When you wrote them -- and you've got a copy of</p> <p>9 that letter; is that right?</p> <p>10 A. I do.</p> <p>11 Q. Okay. When you wrote them, did you express only</p> <p>12 the issue of disparate impact or did you discuss the</p> <p>13 issue of whether or not the legislation had a</p> <p>14 discriminatory purpose?</p> <p>15 A. Probably both but the easiest thing to do,</p> <p>16 obviously, would be go look at it.</p> <p>17 Q. Do you have that here? Can you produce the</p> <p>18 letter?</p> <p>19 A. I don't have it here.</p> <p>20 Q. So, your first contact with the Department of</p> <p>21 Justice in this case regarding Senate Bill 14 or voter</p> <p>22 identification came in a correspondence in January of</p> <p>23 2012?</p> <p>24 A. Patrick, just because we're on the record, I want</p> <p>25 to make sure I'm clear on it. If I called, there may be</p>
<p style="text-align: center;">10</p> <p>1 letter to whom?</p> <p>2 A. DOJ.</p> <p>3 Q. So, are you saying your first contact with the</p> <p>4 Department of Justice was January of 2012?</p> <p>5 MR. DUNN: Are you talking about photo ID,</p> <p>6 redistricting or any context?</p> <p>7 MR. SWEETEN: That's a good question.</p> <p>8 Q. (BY MR. SWEETEN) First of all, you had</p> <p>9 involvement in the redistricting litigation?</p> <p>10 A. That's correct.</p> <p>11 Q. You testified in that litigation?</p> <p>12 A. That's correct.</p> <p>13 Q. When you did first speak with the Department of</p> <p>14 Justice about Senate Bill 14 or the issue of voter</p> <p>15 identification?</p> <p>16 A. It would be a shear guess on my part. It's so</p> <p>17 easy to check it. So, I suggest you go and check but I</p> <p>18 deal with the Department of Justice on a regular basis.</p> <p>19 As it relates to this bill for this past session,</p> <p>20 according to my notes -- but the letter will be public.</p> <p>21 The first letter that I see, according to my notes, was</p> <p>22 January 23rd. I don't think that I did one before then</p> <p>23 but I suspect that I wanted them to watch throughout the</p> <p>24 process on it.</p> <p>25 So, we just -- and I'd be more than happy to</p>	<p style="text-align: center;">12</p> <p>1 some record of it, I don't know, but I knew that I would</p> <p>2 end up having to go to the Department of Justice to ask</p> <p>3 them to pay very close attention to what we do in Texas.</p> <p>4 So, I'm just suggesting instead of me guessing,</p> <p>5 understand how the process works, the letter will lay it</p> <p>6 out pretty clearly but I didn't go review it before this</p> <p>7 meeting, you know.</p> <p>8 Q. Okay. Well, then let me just make sure I'm</p> <p>9 clear. The letter would tell us when you first</p> <p>10 contacted the Department of Justice regarding voter</p> <p>11 identification?</p> <p>12 A. The letter would tell you the first time I</p> <p>13 contacted the Department of Justice in writing and it</p> <p>14 may make reference to if I had ever called.</p> <p>15 Q. Okay.</p> <p>16 A. I suspect that I may have called them as well but</p> <p>17 I just wouldn't have a record or recollection of when</p> <p>18 the first time was when I made contact.</p> <p>19 I'm sure that shortly after the new</p> <p>20 administration went in, I went and visited with the</p> <p>21 Justice Department on a host of issues, as I did with</p> <p>22 the previous Justice Department under the previous</p> <p>23 administration.</p> <p>24 Q. Who in the Department of Justice have you</p> <p>25 discussed the issue of voter ID with?</p>

13

1 A. Civil Rights Division.
 2 Q. Who specifically?
 3 A. I don't remember.
 4 Q. Jennifer Maranzano is on the phone. Have you
 5 ever talked to her?
 6 A. I have.
 7 Q. Have you talked to Elizabeth Westfall?
 8 A. I just don't know.
 9 Q. Are there more than one DOJ attorneys you've
 10 spoken with?
 11 A. I suspect. Patrick, I'm willing to bet next week
 12 I won't remember your name.
 13 Q. Okay. After January of 2012, I want to talk
 14 about your additional contact with the Department of
 15 Justice. Now, we have a declaration you've provided and
 16 it's been filed and, obviously, you discussed that issue
 17 with the Department of Justice, correct?
 18 A. That's correct.
 19 Q. Can you give me an idea of the frequency with
 20 which you've talked to the attorneys at the Department
 21 of Justice from January until the present?
 22 A. I would have no idea. I would assume that they
 23 make keep a record of it. I don't. I'd have to go
 24 check phone logs but I am someone who relies on the
 25 Department of Justice to give us checks and balances.

14

1 Q. Okay. So, now earlier you said you've been
 2 deposed, correct?
 3 A. That's correct.
 4 Q. I want to ask you in what proceedings have you
 5 been deposed, sir?
 6 A. I have been deposed with regard to redistricting,
 7 probably most instances in which it has come up since
 8 I've been in the Senate and back when I was on City
 9 Council as well.
 10 I think I've been deposed on some issues
 11 involving criminal justice matters, you know, people who
 12 have been wrongfully convicted.
 13 So, I assume your question is when have I been
 14 deposed in general every time in my life?
 15 Q. Let's start with how many times, do you know?
 16 A. I have no idea.
 17 Q. Would you say it's over ten, under ten?
 18 A. Probably around about ten.
 19 Q. And you've told me issues related to criminal
 20 justice, redistricting. Any other issues?
 21 A. I'd have to scratch my head and ponder over that
 22 for a while.
 23 Q. Okay. Now, the issues of criminal justice, did
 24 you testify in a specific case involving a defendant or
 25 was it a civil -- I mean, it, obviously, was a civil

15

1 case if it was a deposition.
 2 A. I've been deposed, I think, on the issue of
 3 whether or not they ought to pay taxes as a result of
 4 legislation I've worked on to give people who have been
 5 wrongfully convicted compensation.
 6 I think I've been deposed on one case involving
 7 somebody was suing The Innocence Project out in New
 8 York.
 9 Q. Okay. And then the redistricting, there was
 10 certainly -- there was a recent redistricting case.
 11 You've eluded to other redistricting cases that you've
 12 been involved in. Can you tell me approximately when
 13 those occurred?
 14 A. This last cycle on the Texas redistricting,
 15 congressional redistricting in -- well, Texas
 16 reredistricting in either '03 or '05, whenever we did
 17 the mid decade redistricting. I can recall going to
 18 federal court and being deposed before that.
 19 When I think about it, I've been deposed on a
 20 case where somebody was suing the University of Texas
 21 Law School Foundation.
 22 Q. Can you tell me about that case?
 23 A. Which one?
 24 Q. The suing of the UT Law School Foundation. What
 25 was the basis of that claim?

16

1 A. That was a professor suing Joe Jamail, saying
 2 that he thought that we should -- the Law School
 3 Foundation should have funded a second mortgage on his
 4 home or either a mortgage on a second home.
 5 Q. And you sued on behalf of -- I mean, you were
 6 deposed -- you were a witness on behalf of the UT Law
 7 School Foundation; is that correct?
 8 A. I was probably a witness on behalf of Joe Jamail.
 9 Q. Okay.
 10 A. A character witness for him.
 11 Q. Okay.
 12 A. But you would have to go check. Just go check
 13 and see if I was there on behalf of the Foundation or as
 14 a character witness for Jamail.
 15 Q. Where do you live?
 16 A. 2102 Sunset.
 17 Q. And who lives at your home? Can you tell me the
 18 names of the individual that live at your home?
 19 A. Well, the ones I know about would be my wife,
 20 Licia Green, and Maria Hill, Nicole Ellis sometimes,
 21 Rodney Leeland Ellis and Alena Ellis on a regular basis.
 22 Q. All right. And I want to ask about each them as
 23 to whether they have -- first, if you can give me their
 24 age, and then I'm going to ask you a question about some
 25 of their identification is the purpose of this question.

17

1 Licia Green, that's your wife?
 2 A. Yes.
 3 Q. Does she have a driver's license?
 4 A. She does.
 5 Q. Maria Hill, how old is she?
 6 A. 18.
 7 Q. Does she have a driver's license?
 8 A. She does.
 9 Q. Nicole Ellis?
 10 A. 24.
 11 Q. And does she have a driver's license?
 12 A. She does.
 13 Q. Rodney Ellis -- is it junior?
 14 A. No.
 15 Q. I'm sorry?
 16 A. No, he's not a junior.
 17 Q. How old is he?
 18 A. 13.
 19 Q. Okay.
 20 A. No driver's license.
 21 Q. And he's not registered to vote either?
 22 A. Alena is 9. No driver's license.
 23 Q. Neither is she registered to vote?
 24 A. No.
 25 Q. Okay. Let's talk about the declaration that you

18

1 filed in this case.
 2 MR. SWEETEN: And I'm going to go ahead and
 3 have the court reporter mark this as Ellis Deposition
 4 Exhibit 1.
 5 (Exhibit 1 marked.)
 6 Q. (BY MR. SWEETEN) Okay. I'm going to have you
 7 look at the official copy. And can you identify what
 8 Ellis Exhibit 1 is for me?
 9 A. This is my declaration.
 10 Q. And I want to ask you about the process of
 11 creating this. First of all, if you'll look at the very
 12 back, this declaration is dated 4-9-12. So, April 9,
 13 2012. Did you sign this document?
 14 A. That is correct.
 15 Q. When you signed this document, were you aware it
 16 was going to be filed with the Federal Court in the
 17 District of Columbia?
 18 A. Yes.
 19 Q. When were you first contacted about providing a
 20 declaration as you have in this case?
 21 A. I have no idea.
 22 Q. Okay. I want to ask you who wrote this
 23 declaration for you?
 24 A. I'm not sure but I assume I worked on it, my
 25 staff and I hope that Chad Dunn here.

19

1 Q. Okay. So, are you indicating that the Department
 2 of Justice did not assist you in drafting this
 3 declaration?
 4 A. That's correct.
 5 Q. And when I'm asking you whether they assisted
 6 you, I'm asking did they write any of the language
 7 within this document?
 8 A. Not to my knowledge.
 9 Q. Okay. Did they -- did they coordinate the filing
 10 of this document?
 11 A. Not to my knowledge. You know, I know them. I'm
 12 close to them but I'm not that close.
 13 Q. Okay. And it wouldn't -- and, in fact, would it
 14 have been an issue for you if the Department of Justice
 15 had actually drafted this and sent this to you for your
 16 signature?
 17 A. If it was correct, it wouldn't have been an
 18 issue. If it was not correct, it would have been an
 19 issue.
 20 Q. Okay. But in any event, that's not the case that
 21 the --
 22 A. It's not the case.
 23 Q. Let me finish -- that the Department of Justice
 24 did not draft this affidavit and did not send it to you
 25 ultimately for your signature; is that correct?

20

1 A. That's correct.
 2 Q. Did you discuss the contents of this document
 3 before you executed it on April 9th, 2012?
 4 A. With who?
 5 Q. With the Department of Justice.
 6 A. No.
 7 Q. Okay. So, without any discussions with the
 8 Department of Justice, without them providing any sort
 9 of input whatsoever in this declaration, you signed this
 10 declaration; is that correct?
 11 A. I may have talked to the Department of Justice.
 12 There's a distinction between the Department of Justice
 13 writing something for me and me raising concerns with
 14 the Justice Department and some of the language and
 15 concerns that I raised would end up in a document.
 16 Q. But they couldn't have ended up in a document
 17 from the Department of Justice if the Department of
 18 Justice didn't draft it, right?
 19 A. Let me make sure I understand your question.
 20 Would you repeat it again?
 21 Q. Yes. In fact, let me just ask it again.
 22 You indicated the Department of Justice didn't
 23 write this?
 24 A. That's correct.
 25 Q. You indicated -- and I'm not sure what your

21

1 testimony is on this but did you discuss the contents of
 2 this affidavit with the Department of Justice prior to
 3 executing it?
 4 A. Not to my knowledge in terms of details of what
 5 is in it but if I had discussions with the Department of
 6 Justice about my concerns, whether or not some of the
 7 concerns I raised or any questions that the Department
 8 of Justice would have asked me would have ended up in
 9 this affidavit would be a different issue.
 10 Q. So, you're saying the only extent to which
 11 anything -- any input from the Department of Justice
 12 would have had input into this document would have been
 13 if it resulted from a conversation that you had with
 14 them and you put it in here; is that correct?
 15 A. What I'm saying is from the tone of your
 16 question, if you are trying to figure out if the
 17 Department of Justice coached me, my answer is no.
 18 Q. Okay.
 19 A. If your concern is whether or not I went to the
 20 Justice Department and asked are these valid concerns,
 21 yes.
 22 Q. Okay.
 23 A. You know, I'm familiar enough with the law to
 24 know when something appears incorrect to me. So, I,
 25 clearly, went to the Justice Department both verbally

22

1 with previous letters that I sent and in person and
 2 said, "This is what I think is going on in Texas. I
 3 have concerns about this. Is it your understanding of
 4 the law that these are legitimate concerns?"
 5 Q. But that wasn't in the context of this document,
 6 you didn't send them a draft of this document before you
 7 signed it?
 8 A. No.
 9 Q. No one on your staff sent this to the Department
 10 of Justice before you signed it?
 11 A. Not to my knowledge.
 12 Q. Okay. They did not give you input into this
 13 specific document as you were drafting it?
 14 A. The only input that I would have gotten would
 15 have been me asking them are these valid concerns, not
 16 them coaching me to say you raise these concerns.
 17 Q. Okay. So, the process of drafting this
 18 internally then, did a member of your staff draft this
 19 or did Mr. Dunn draft this document?
 20 A. You know, I don't -- in terms of the actual
 21 drafting of it, I don't know if it was a person on my
 22 staff or if it was my lawyer, Mr. Dunn.
 23 Q. Did you dictate it? Did you write it on a piece
 24 of paper to be typed?
 25 A. I probably dictated it.

23

1 Q. Okay. Do you use audio dictation or do you do --
 2 A. I usually just sort of blurt it out.
 3 Q. You tell them what you want in it?
 4 A. Yeah.
 5 Q. And it was put in by someone from your
 6 legislative staff; is that right?
 7 A. And my lawyer.
 8 Q. So, let's look at it. And by the way, when you
 9 signed this, you understood that this was going to be
 10 filed with the Federal Court in the District of
 11 Columbia, correct?
 12 A. That's correct.
 13 Q. In paragraph 1, it says, "My name is Rodney
 14 Ellis. I am a resident of Houston, Texas and registered
 15 to vote in Harris County, Texas. I am African
 16 American." Who added -- why did you decide to put that
 17 you are African American in paragraph 1?
 18 A. Well, it's something I'm pretty proud of.
 19 Q. Okay.
 20 A. I assume that the Court may not be able to guess
 21 it. So, I wanted to make sure that they were aware of
 22 it.
 23 Q. Okay.
 24 A. But you would be surprised that oftentimes even
 25 when someone is looking at me, if I'm giving a speech, I

24

1 might point out I'm African American. It's something
 2 I'm proud of.
 3 Q. And did you think that was relevant to the
 4 matters that we're discussing today, voter ID?
 5 A. I think that the fact that I'm African American
 6 and representing an overwhelmingly, maybe 90 percent,
 7 close to 90 percent minority district now, I thought
 8 that that would be relevant to the Court or anyone
 9 reading this document.
 10 Q. Okay. Well, let's go ahead and keep going
 11 through the document. Here on paragraph 3 -- and
 12 paragraph 2 talks about your service on the Texas Senate
 13 and the committees on which you've served, correct?
 14 A. That's correct.
 15 Q. All right. Number 3 says, "In 2005,
 16 Representative Mary Denny, who is white, introduced HB
 17 1706, a bill to require photo identification for
 18 voting." First of all, in that, is House Bill 1706 the
 19 first voter identification bill that you are aware of
 20 being filed with either the House or the Senate at any
 21 time?
 22 A. It's the first one that I remember.
 23 Q. Okay. Now, who is Mary Denny?
 24 A. State Representative.
 25 Q. Okay. And where is she out of?

25

1 A. Somewhere in Central Texas, I think.
 2 Q. Okay. Here you put, "who is white," in the
 3 affidavit. Why did you think that was an important
 4 point to put in paragraph 3, Senator Ellis?
 5 A. I wanted the Court to know when they were reading
 6 this that clearly the issue of race was at issue,
 7 involved in the voter ID battle in Texas.
 8 Q. And we see that several other times. In
 9 paragraph 4 you say Betty Brown is white. In paragraph
 10 6, you say Troy Fraser is white. Is that the same
 11 reason that on each one of these that when you're
 12 discussing proponents of the bill that you're saying
 13 what their race is, that you think that that's --
 14 explain to me why you did that.
 15 A. I wanted the Court to know that the leaders in
 16 the Legislature who are African American and Hispanic
 17 and those who are white were clearly in different camps
 18 on this issue, with the hope that it would lead them to
 19 ask the question why.
 20 Q. Okay. Let me just advance to 2011 then and the
 21 vote on Senate Bill 14 in the House of Representatives.
 22 Are you aware of whether there were Hispanic or African
 23 American Legislators who voted in favor of Senate Bill
 24 14?
 25 A. If there were, there were none in the Senate but

26

1 if there were some in the House, I would suspect that
 2 they were the ones who did not represent the interests
 3 of those African American or Hispanic voters in their
 4 districts.
 5 Q. So, if a Latino or African American voted for
 6 Senate Bill 14 in either the House or the Senate, you're
 7 indicating it's your opinion that they weren't
 8 representing their constituents who are black or Latino?
 9 A. Yes, just as there were black people who
 10 supported the South in the Civil War. Sometimes it's
 11 possible for people of different races to be on the
 12 wrong side of an issue, in my humble opinion.
 13 Q. Okay. So, if anyone voted for Senate Bill 14
 14 that is African American or Hispanic, they weren't, in
 15 your view, representing their African American or
 16 Hispanic constituents?
 17 A. In my opinion, that is correct.
 18 Q. And that's just what it is, is your opinion,
 19 correct?
 20 A. Well, it's my opinion based on the data that I
 21 have seen and my belief that the voter ID requirements
 22 have a disproportionate impact on people of color.
 23 Q. Okay.
 24 A. On African Americans and Hispanics.
 25 Q. Okay. We'll get into that.

27

1 A. They have a disproportionate impact on other
 2 groups as well but particularly on those groups.
 3 Q. Okay. Were you told -- let's go back to the
 4 affidavit. Were you told why this affidavit needed to
 5 be filed with the District Court?
 6 MR. DUNN: Don't get into any discussions
 7 you had with me or Mr. Hebert but to the extent you
 8 talked to the Department of Justice or somebody who is
 9 not your lawyers, you can reveal those.
 10 A. My assumption was that I needed to file an
 11 affidavit because I wanted my voice to be heard on this
 12 important issue. I didn't want to have others speaking
 13 for me, particularly the State of Texas.
 14 Q. (BY MR. SWEETEN) Okay. All right. Let's go
 15 back to paragraph 3. And in that, you're talking about
 16 House Bill 1706. Can you tell me about the specific
 17 provisions of House Bill 1706 based upon your
 18 recollection?
 19 A. Well, based on my recollection of the voter ID
 20 bill, it started off the first time that a bill was put
 21 in, I think in 2005 -- 1706, that's so far back, in
 22 2005, you know, I would say that her language that first
 23 session was probably -- I'm just guessing. I've have to
 24 go back and look at it. I haven't seen it since 2006, I
 25 assume. I assume it was not as onerous as the final

28

1 bill ended up being. My sense is that this bill has
 2 gotten harsher or had more of a disparate impact on
 3 minority groups over time.
 4 Q. As you're sitting here, can you tell me what
 5 forms of photo identification would have been acceptable
 6 under 1706?
 7 A. I don't remember. I could pull the bill.
 8 Q. I think what I'm hearing from your testimony is
 9 that the photo identification requirements from 2005 and
 10 as they were introduced, you said were more onerous; is
 11 that correct?
 12 A. Well, yeah, the bill got more onerous over time.
 13 Q. Okay.
 14 A. Which is just an interesting side point. Usually
 15 bills, as you go through the process to gain consensus,
 16 you compromise a bit. In the case of this bill, it
 17 ended up -- from someone else's perspective, I guess
 18 they would say it got stronger. From my perspective, I
 19 would say it became more onerous.
 20 Q. I understand that you can't testify as to the
 21 specifics of the bill as you're sitting here but let me
 22 ask you did you pose Senate Bill 1706 as filed in 2005?
 23 A. I'm pretty sure I did. I don't think that we had
 24 a vote on the Senate floor. According to this
 25 affidavit, it was referred to the Senate State Affairs

29

1 Committee. The committee did not hold a hearing on it
2 or vote it out.

3 Q. But your position, nonetheless, in 2005 was you
4 were not in support of House Bill 1706?

5 A. I assume that that was one of the reasons why
6 they opted not to have a vote in the committee. I was
7 sitting on the State Affairs Committee in 2005.

8 Q. Let's go to paragraph 4.

9 And by the way, any other facts you can tell us
10 about House Bill 1706 that you haven't discussed?

11 A. Not off the top of my head. I would have to pull
12 the bill and look at it.

13 Q. Okay. Now, you mentioned Mary Denny. Is there
14 any evidence based on the public record that you have
15 that Ms. Denny had any sort of purposeful discriminatory
16 intent?

17 A. I know that the bill would have had a disparate
18 impact on people of color. I'm aware of the movement
19 around the country to try to reduce minority voting
20 strength, in Texas and in other states, and I'm assuming
21 that Mary Denny got the bill from ALEC or some other far
22 right organization.

23 Q. You don't know that, though?

24 A. No, I don't.

25 Q. That's an assumption, you don't have any facts to

30

1 support that?

2 A. No.

3 Q. Okay. I guess before we go too much farther into
4 this, I want to discuss the issue of legislative
5 privilege with you. First of all, you have waived your
6 legislative privilege, is that correct, in this case?

7 A. I have waived it when I want it waived, which I
8 suspect is more than some of my colleagues have done.

9 Q. Okay. Well, is there anything you are reserving
10 your legislative privilege as to the issues that we're
11 discussing today?

12 A. Depends on what you ask. So far I haven't used
13 it but if you ask something that I don't care to answer,
14 I'll use it.

15 Q. Are you going to assert legislative privilege
16 with respect to Senate Bill 14 in any way?

17 A. Depends on what the question is.

18 Q. Okay.

19 A. I don't plan to give you a -- I don't plan to
20 just give you carte blanche on anything you want to ask
21 unless all of my colleagues decide to do that.

22 Q. So, am I to understand you are in some ways
23 asserting the legislative privilege today?

24 A. If I think I need it.

25 Q. Okay. Can you give me any more guidance as to

31

1 when you -- let me ask you this: Are you going to
2 reveal communications between you and other legislative
3 staff?

4 A. Depends on which ones you ask for.

5 Q. Are you going to reveal your communications with
6 other Senators?

7 A. Depends on which ones you ask for.

8 Q. Which ones are you going to reveal?

9 A. I wouldn't know until you ask.

10 Q. Are you going to assert privilege with respect to
11 your thoughts and impressions of Senate Bill 14?

12 A. Depends on which ones you ask for.

13 Q. Okay. Now, let me also tell you that a number of
14 individuals in this case have asserted legislative
15 privilege with respect to this case.

16 A. I've heard that.

17 Q. Okay.

18 A. Which ones, while you're thinking about it?

19 MR. SWEETEN: Let's go ahead and mark this
20 as Ellis 2.

21 (Exhibit 2 marked.)

22 Q. (BY MR. SWEETEN) All right. I'm handing you
23 what's been marked as Exhibit 2. And these are
24 individuals who have waived their legislative privilege.

25 But as I understand it today, Senator Ellis, you are

32

1 indicating, certainly for the first time to my
2 knowledge, that you may, in some instances, invoke the
3 legislative privilege as to some questions; is that
4 correct?

5 A. I'm contemplating that based on looking at your
6 Exhibit 2. It looks like most of these are members --

7 Q. I understand these individuals have not asserted
8 legislative privilege, what I've handed you.

9 A. Okay. So, I'll have to think about it because it
10 looks like most of these are members who represent
11 predominantly minority districts other than
12 Ms. Harper-Brown.

13 Q. Do you need to talk with your attorney as to
14 whether you are going to be invoking legislative
15 privilege?

16 MR. DUNN: I think it's his privilege. I
17 mean, obviously, if it gets into attorney/client
18 privilege, we may choose to confer and depending on the
19 question, we may choose to confer but I don't think he's
20 committed to invoking privilege. He's more or less
21 going to waive it but he's reserving the right to do so.

22 A. I'm a nice guy. Depends on what you ask.

23 Q. (BY MR. SWEETEN) Okay. So, this is -- and
24 you're indicating that in some instances, you may assert
25 and some instances, you may not; is that correct?

33

1 A. I'm indicating that I'm going to reserve the
 2 right based on what you ask me and respectfully, of
 3 course, how much of my time you take today.
 4 Q. Okay.
 5 A. I may be in a mood to answer more tomorrow or
 6 later on this evening.
 7 Q. Okay. So, the purpose of me showing you this is
 8 to tell you that these individuals have waived. So, to
 9 the extent you, yourself are not asserting legislative
 10 privilege, you're free to reveal any communications with
 11 these individuals.
 12 A. Okay.
 13 Q. If an individual does not appear on that list,
 14 then I don't want -- I'm going to be asking you
 15 questions about whether you've had conversations with
 16 them but I don't want you to reveal the substance of
 17 those communications with them.
 18 MR. DUNN: Well, we object to that.
 19 Senator, if you're asked a question and
 20 responsive to that is a communication with any other
 21 member of the Legislature, you can reveal it, and it
 22 will be up to the Court whether it wants to consider it
 23 under the privilege.
 24 But if your question asks for information,
 25 by instructing him not to reveal communications with

34

1 other Senators or members, it creates an inaccurate
 2 record.
 3 Q. (BY MR. SWEETEN) Okay. Well, let me put it this
 4 way: My question, when I'm asking it, is not intended
 5 to find the substance of those communications with those
 6 who have claimed the legislative privilege. If your
 7 attorney is instructing you to go ahead and provide
 8 those, that is not the purpose of my question is to ask
 9 that.
 10 I do want you to identify the specific
 11 individuals with whom you had conversations but not the
 12 substance if someone has claimed legislative privilege.
 13 Is that -- is what I'm saying clear to you?
 14 MR. DUNN: So, we have the stipulation that
 15 none of your questions today are intended to elicit
 16 testimony of his communications with members other than
 17 those on Exhibit 2, and with that stipulation, he'll
 18 only talk about his communications with those on
 19 Exhibit 2.
 20 MR. SWEETEN: Well, I want to be clear on
 21 that because I do -- I am asking, for example, if he's
 22 had a communication with someone, I want him to reveal
 23 privilege log stuff, who he had the communication with,
 24 when, the means of the communication I may be asking.
 25 Q. (BY MR. SWEETEN) So, I want you to identify that

35

1 a conversation occurred with someone who has asserted
 2 legislative privilege. I do not want you to -- my
 3 question should not be interpreted to ask you the
 4 substance of those communications with those who have
 5 claimed the privilege. Is that clear?
 6 A. Yes, it's clear. It's partially why I'm going to
 7 reserve the right to exert mine because it sounds like
 8 you're saying you want to know about any conversations
 9 I've had with anybody on this list --
 10 Q. Yes.
 11 A. -- but you don't want to know -- you don't want
 12 me to testify about any conversations I've had with
 13 people who are not on this list.
 14 Q. I want you to testify if such a conversation
 15 occurred but the legislative privilege is each
 16 Legislator's to hold. And so, I'm not -- the intention
 17 of my question is to not invade that privilege. So,
 18 that's what I'm instructing you.
 19 A. Well, why don't we just try and see what happens.
 20 Q. Okay. That's fine. And if -- we'll just go
 21 question by question, and if you have a question as to
 22 whether I'm asking about those types of conversations,
 23 will you ask me to clarify if it includes that?
 24 A. I will.
 25 Q. Okay. All right. So, let's talk about Mary

36

1 Denny. Do you have any evidence that Ms. Denny, in
 2 introducing House Bill 1706, intended the bill to
 3 purposely discriminate against racial minorities or
 4 anyone else?
 5 A. I would have had very limited, if any, contact
 6 with Representative Denny on this bill in 2005 since it
 7 was not voted on in Senate Committee or on the Senate
 8 floor.
 9 Q. Just so I'm clear, House Bill 1706, it was back
 10 in '05 and we've talked about that you don't
 11 specifically recall what it provided for, nonetheless,
 12 it's your testimony that other than what was in the text
 13 of the bill, that there's not any sort of evidence of
 14 purposeful discrimination on behalf of Representative
 15 Denny in introducing 1706; is that correct?
 16 MR. DUNN: Object to the compound.
 17 But you can answer.
 18 A. I'm saying I have no idea. I never had a
 19 conversation with her about this bill.
 20 Q. (BY MR. SWEETEN) You've never talked with her
 21 about the bill. Is there any evidence whatsoever, other
 22 than the text of the bill, that you have that you
 23 believe references Ms. Denny having a discriminatory
 24 purpose in filing the bill?
 25 A. There's none that I have.

37

1 Q. Okay. And let's talk then about paragraph 4. In
2 2007, you say Representative Betty Brown, who is white,
3 introduced another --

4 A. Which paragraph?

5 Q. 4.

6 A. Okay.

7 Q. "In 2007, Representative Betty Brown, who is
8 white, introduced another photo identification bill,
9 House Bill 218." Did I read that correctly?

10 A. That's correct.

11 Q. Do you recall specifically House Bill 218 and its
12 provisions relating to photo identification?

13 A. I don't know all the details but I assume it was
14 along the same lines of the legislation, maybe not quite
15 as strong or as onerous as the legislation ended up
16 passing in 2011 but it was an early version of the voter
17 ID bill.

18 Q. That's been five years ago, so, I imagine if I
19 asked you what the specific provisions of the text are,
20 you don't know?

21 A. No. What I would generally do to make sure I get
22 them right, particularly in a deposition, would be pull
23 it and look at it.

24 Q. Okay. But -- and that's fair but I'm asking you
25 just do you personally know as you're sitting here what

38

1 the text of the bill said, the provisions of it?

2 A. No.

3 Q. And let me also ask you is there any evidence
4 that you have other than the text of the bill that
5 indicates that House Bill 218 was presented with a
6 discriminatory purpose by Ms. Brown?

7 A. Nothing that I can -- that I can quantify.

8 Q. Okay. There's no evidence -- by the way, have
9 you had communications with Ms. Brown?

10 A. About her specific bill?

11 Q. Yes.

12 A. I don't recall. Most of my conversations would
13 have been with members of the Senate.

14 Q. You don't recall any specific conversations you
15 had with Betty Brown?

16 A. No.

17 Q. Okay. You didn't discuss this specific bill with
18 her?

19 A. No.

20 Q. Are you aware of any sort of evidence that you
21 believe evidences that Betty Brown had an intention to
22 purposefully discriminate against someone when she filed
23 House Bill 218 other than the text of the bill, which I
24 think you think is discriminatory?

25 A. Well, the only evidence that I would have in

39

1 addition to the text of the bill would be knowing the
2 statistics or the lack of statistics on the number of
3 African Americans and Hispanics in Texas who don't have
4 a driver's license or a government ID.

5 Q. Okay. And do you know those statistics?

6 A. I don't know the exact numbers. I knew them in
7 debate and probably said it on the floor of the Senate
8 but if you're asking me the exact percentage, I don't
9 know. I could pull them.

10 But I do know that a higher percentage of African
11 Americans and Hispanics do not have a government ID
12 compared to the number of whites that do.

13 Q. In three or four answers today now, you've
14 testified about the discriminatory effect of the bill
15 and, obviously, I'm here to find out what your testimony
16 is on this. This affidavit is centered on the
17 discriminatory purpose of the bill. Is it a fair
18 characterization for you to say that it is Senator
19 Rodney Ellis' opinion that it is -- that this bill has a
20 discriminatory effect?

21 A. Yes.

22 Q. Is it your opinion as you're sitting here that
23 this bill, Senate Bill 14, has a discriminatory purpose?

24 A. Yes.

25 Q. Okay. We're going to talk about why you think

40

1 this has a discriminatory purpose.

2 A. Would you like to do that now?

3 Q. I will but I'll do it in the order that I think
4 will make sense.

5 A. Okay.

6 Q. And then we can talk about your opinions with
7 respect to the discriminatory effect of it. So, we will
8 get back to that and evidence that you believe shows
9 that.

10 So, as we're going through, you indicate on House
11 Bill 218 the Senate did not pass this bill because
12 proponents of the legislation were unable to garner the
13 support of two-thirds of the Senate, as is most commonly
14 required to pass legislation in the Senate. So, did
15 House Bill 218 pass the House?

16 A. Well, for it to have gotten to the Senate, it had
17 to have passed the House.

18 Q. And did the Senate take this matter -- was it
19 assigned to a committee in the Senate?

20 A. In order for it to get to the floor, under normal
21 procedures, it would have had to.

22 Q. Okay.

23 A. So, in that session, I don't think we did any
24 Committee of the Whole and no tricks were played.

25 Q. Okay.

41

1 A. So, I assume it came through the State Affairs
2 Committee or some committee to get to the floor.
3 Q. And is it your testimony that -- was there an up
4 or down vote on House Bill 218?
5 A. There was not an up or down vote. That's what
6 the affidavit says, that the Senate did not pass the
7 bill because proponents of the legislation were unable
8 to garner the support of two-thirds of the Senate, as is
9 the case most commonly required in the Texas Senate.
10 Q. So, are you indicating that House Bill 218 did
11 not pass due to -- was it the presence of a blocker
12 bill?
13 A. It didn't pass because they didn't get two-thirds
14 of the vote. I'm sure you're aware the tradition in the
15 Texas Senate is they have to have two-thirds vote to
16 bring a bill up and they usually use a blocker bill as a
17 way of preserving that tradition of a two-thirds vote.
18 So, I just want to make sure you don't -- I'm sure you
19 know that -- don't confuse the two issues.
20 Q. Well, we'll talk about the two-thirds rule at a
21 later time but I'm asking you specifically from a
22 procedural standpoint.
23 You indicate here that it didn't garner
24 two-thirds vote from the Senate. So, does that mean
25 that there was a blocker bill in front of this bill or

42

1 do you know why it would have required two-thirds in
2 this instance?
3 A. I hope there was a blocker bill but during that
4 session, as it related to this bill -- and most bills,
5 we were recognizing the two-thirds tradition. A blocker
6 bill sometimes is in the mind of the beholder.
7 Now, I'm not trying to cute but everybody assumed
8 there was a blocker bill in the last legislative session
9 but the budget came up without a two-thirds vote. I
10 mean, that's inside a baseball, so to speak.
11 So, the assumption is -- you know, they didn't
12 have a two-thirds vote to bring the bill up.
13 Q. But if there's no blocker bill, would they have
14 needed a two-thirds vote?
15 A. No. But, of course, if there had been no blocker
16 bill, no bill would have needed a two-thirds vote. So,
17 when I say a blocker bill is in the mind of the
18 beholder, somebody could go move the blocker bill. That
19 rule is based on a tradition, just as it is based on a
20 tradition in the United States Senate.
21 Q. Are you saying the blocker bill is a tradition?
22 A. The two-thirds vote is a tradition and the way
23 you normally observe the tradition is with a blocker
24 bill. You put a bill up that the person who is carrying
25 it will never pass, like naming Red River the Blue

43

1 River. It's a bill that would never pass.
2 Now, if somebody wanted to break the tradition,
3 just go move the blocker bill. So, it's the tradition
4 that matters. And the procedure which we normally use
5 to observe the tradition is called having a blocker bill
6 there.
7 Q. It's a true statement, isn't it, that the Senate,
8 each time it meets, that they decide the rules which
9 they will operate under for each session?
10 A. Arguably.
11 Q. How is that not the case?
12 A. The two-thirds tradition has been observed in the
13 Texas Senate for somewhere in the neighborhood of a
14 hundred years. As is the case with most traditions, if
15 somebody is not paying attention to the rules, meaning
16 if it's not a controversial bill, maybe you wouldn't
17 observe it if it didn't come up.
18 My read of history is that in the Texas Senate,
19 the two-thirds tradition was broken during the session
20 of 1950 something when you had a bunch of awful stuff
21 in order to pass a redistricting bill when we were
22 reredistricting in 2003, to pass this voter ID bill in
23 the last session and to pass the budget in the last
24 session.
25 Q. Let's back up.

44

1 Do you know whether or not a blocker bill was in
2 place in 2007?
3 A. I'm assuming there was one.
4 Q. Okay.
5 A. Because on most bills that came up, we had a
6 two-thirds vote.
7 Q. Because if there's no blocker bill, there's no
8 two-thirds -- you don't have to have two-thirds to pass
9 it?
10 A. That's correct.
11 Q. You just pass it based on the regular order of
12 business?
13 A. I'm not trying to argue semantics with you. What
14 I'm saying is whatever the blocker bill is, you could go
15 past it.
16 Q. Okay.
17 A. You could have done that a hundred years ago and
18 there would have been no two-thirds vote. So, the
19 notion of a blocker is a tradition or concept that was
20 put in place so you would have the so-called two-thirds
21 rule.
22 Q. You call it a tradition but my question earlier
23 was does the Senate, each time it meets for each
24 legislative session, pass the rules under which it
25 intends to operate for that session?

45

1 A. With a caveat, I'll say yes.
 2 Q. Well, first, is that yes, with a caveat?
 3 A. Possibly. So, the answer is it's not a clear-cut
 4 yes or no answer. Every session that I've been there,
 5 the Texas Senate has adopted essentially the same rules
 6 that have always been in place, with the exception of
 7 for this voter ID bill, they did a special order to get
 8 around it, and we went into a special session on
 9 reredistricting in 2003.
 10 Q. My question is does each Senate have the
 11 opportunity to adopt the rules under which they will
 12 operate under before each legislative session?
 13 A. Yes.
 14 MR. DUNN: Objection. Asked and answered.
 15 A. Yes, with my caveat.
 16 Q. (BY MR. SWEETEN) If the Senate decides -- if the
 17 Senate decides, prior to any legislative session or
 18 during any legislative session, that they are going to
 19 operate under just a straight majority vote, it is
 20 within their power, as a body, to decide to do so?
 21 A. That's correct.
 22 Q. There's nothing illegal whatsoever about that?
 23 A. Nothing illegal about it.
 24 Q. Okay. In 2007 -- actually, strike that.
 25 Let's go to -- so, if I asked you in paragraph 4,

46

1 why did House Bill 218 not pass, you are indicating that
 2 because of the two-thirds rule of the Senate?
 3 A. That's correct.
 4 Q. But as far as the specifics as to why it didn't
 5 pass, whether it was because it was a blocker bill,
 6 whether it didn't come up in the -- it was -- it didn't
 7 come up in the regular order of business, you can't tell
 8 me as you're sitting here other than we think it was
 9 blocked by the two-thirds rule?
 10 A. I'm assuming we had a blocker bill.
 11 Q. All right. So, those -- is there any other
 12 evidence that you have that House Bill 218 was passed
 13 with the purpose to discriminate other than the text of
 14 the bill?
 15 MR. DUNN: It wasn't passed. So, it
 16 misstates the evidence.
 17 Q. (BY MR. SWEETEN) I guess it passed the House.
 18 Okay. Then let's talk about do you have any evidence
 19 whatsoever that House Bill 218 was introduced or passed
 20 by the House with the purpose of discriminating other
 21 than what the bill says?
 22 A. Yeah.
 23 Q. Okay. What is it?
 24 A. I knew that it would have a disproportionate
 25 impact on African Americans and Hispanics because I knew

47

1 then, as I know now, a larger percentage of African
 2 Americans and Hispanics do not have a driver's license
 3 or some other form of government ID. That was the case
 4 in 2005. It was the case in 2007, '9, '11 and it's the
 5 case today.
 6 Q. Okay. Well, then let's talk about that. You
 7 said that you knew in 2007 that it would have a
 8 disproportionate effect on blacks and Hispanics; is that
 9 correct?
 10 A. That's correct.
 11 Q. How did you know that?
 12 A. I know that because my district is overwhelmingly
 13 black and Hispanic, and I talk to people who tell me
 14 that they don't have a driver's license.
 15 I know that we've passed rules to take away
 16 driver's licenses if you don't have -- if you have a
 17 warrant, if you have a ticket, and most of the people
 18 who call my office complaining about not being able to
 19 pay their tickets and losing their licenses, I know that
 20 most of them that I talk to -- I don't do a running tab
 21 but I can oftentimes tell by the voices and the
 22 neighborhoods that they live in whether they are African
 23 American or Hispanic.
 24 Q. And that's fair. I think what you're saying,
 25 you're saying that you know because the constituents

48

1 you've talked to told you that, is that a fair
 2 representation of how you know that?
 3 A. I know it because they've told me. I know
 4 because of press accounts about it. I know because I
 5 have looked at data from El Paso County, as an example,
 6 that showed some high percentage -- I can't remember the
 7 number off the top of my head from the press accounts or
 8 report I had somebody pull on it -- a large percentage
 9 of people in El Paso County didn't have driver's
 10 licenses. They were suspended because they got a ticket
 11 because they passed legislation to balance the budget
 12 with exorbitant fees for people who didn't put their
 13 seatbelts on.
 14 Q. Let's back up.
 15 Let's talk about constituents. First of all,
 16 part of your opinion in 2005 that you felt this would
 17 have a disparate impact on minorities is based on what
 18 you're saying some of your constituents told you,
 19 correct?
 20 A. Correct.
 21 Q. I want to ask what other information in 2005 you
 22 had that indicated your belief that this would have a
 23 discriminatory effect?
 24 A. My belief was based on calling the Texas
 25 Department of Motor Vehicles and asking for a report on

49

1 who didn't have driver's licenses and them not being
2 able to tell me.
3 My belief is based on asking my colleagues in the
4 Senate who were supporting the bill did they know
5 statistics, and oftentimes generally being told that
6 they didn't know, and then asking, "Well, do you care?"
7 So, based on the responses that I got, both in
8 private and asking on the floor, if somebody didn't
9 know, it's a fair assumption that a reasonable person
10 would assume lower income people who get a ticket
11 probably have more of a burden coming up with the funds
12 to pay for it. If we pass a law that says you lose your
13 license if you don't get it, you probably don't have a
14 driver's license. And that driver's license would be
15 the most common form of state ID.
16 Q. Did you look at any data in 2005 that -- let me
17 finish the question -- that led you to the conclusion
18 that House Bill, at that time, 1706 would have a
19 discriminatory effect?
20 A. Yes.
21 Q. Tell me the data you looked at.
22 A. I looked at the data that I asked for, and
23 generally what I got was a blank piece of paper. So,
24 that was my damn data.
25 Q. So, the absence of data is what lent to your

50

1 conclusion --
2 A. Yeah.
3 Q. Hold on. Let me finish -- that there was a
4 discriminatory effect of House Bill 1706 in 2005; is
5 that right?
6 A. In my opinion, the absence of data is data. No
7 report -- let me finish. No report means either you
8 don't know or you don't care or you do know and you
9 won't share it, and that's what led me to the conclusion
10 that legislation would have a disparate impact on people
11 of color, that included with the history of Texas of
12 being rather ignoble as it relates to the voting rights
13 of people of color.
14 Q. So, with respect to -- can you tell me about the
15 communications you had -- are you saying with DPS? What
16 you said was Texas Department of Motor Vehicles. Is
17 that DPS you're referring to?
18 A. Yeah, DPS.
19 Q. Do you know who specifically you talked to or
20 made that request from?
21 A. I made the request this last session of the
22 author of the bill on the floor, and not only did I make
23 it, several other members asked for it, and we were
24 repeatedly told, "I'm not advised. Go to the Secretary
25 of State."

51

1 Q. So, you're talking -- you sort of fast forwarded
2 on me to 2011. You're saying that in 2011, you did ask
3 the author of the bill -- is that Mr. Fraser?
4 A. Yes.
5 Q. You asked Senator Fraser about the data, and
6 you're saying that no data was provided; is that
7 correct?
8 A. That's correct.
9 Q. Okay. Did you specifically yourself or did any
10 member of your staff contact DPS requesting data?
11 A. Yes.
12 Q. When?
13 A. I don't know.
14 Q. 2011 session?
15 A. Yeah, sure, during the session. Look, I can't --
16 you know, no more than you can tell me the -- if you
17 ever ran into me walking down the hall, would I remember
18 the exact day but I'm a fairly methodical Legislator. I
19 haven't lasted 22 years and passed the legislation that
20 I've passed just by the seat of my pants. I'm pretty
21 good at it.
22 So, any time this issue was coming up in the
23 Texas Senate, as is the case with any vote I'm casting,
24 I will ask what has been the impact in other states if
25 they have done it, can you quantify it, can you give me

52

1 a report, and then show me the data from the appropriate
2 agency here that we have or if we don't have it.
3 Q. So, in 2011, you asked Senator Fraser on the
4 floor for it?
5 A. If I didn't ask him on the floor, somebody did.
6 Q. Did you ask anyone else in 2011 for data related
7 to the potential discriminatory effect of this bill --
8 of Senate Bill 14? Let's be clear.
9 A. I'm sure that I asked or had somebody on my staff
10 call the appropriate state department so I could say it
11 on the floor. And I'm -- you know, I'm speculating but
12 I'm pretty sure that we couldn't get a report, as would
13 probably be the case even now.
14 Q. What about in 2009, Senate Bill 362, did you --
15 let me finish -- did you make a request or did some
16 member of your staff make a request to the Department of
17 Public Safety regarding data related to discriminatory
18 intent of Senate Bill 362?
19 A. Okay. A minute ago you said 369 but on Senate
20 Bill 362, I am assuming because I'm not a computer --
21 Senator Fraser sits next to me on the floor, and if I'm
22 going to engage in a debate, usually I ask my staff to
23 get me the answer before I ask the question.
24 So, I can't remember who on my staff I would have
25 had to do it but I'm sure that I would have asked before

53

1 asking the question, or among my colleagues, before
2 suggesting anybody ask the question.
3 Q. And, again, your testimony is that in 2009, you
4 saw no data, the absence of data is what you're saying
5 you got?

6 A. Yes.

7 Q. And that's the data that you've reviewed to show
8 that Senate Bill 362 had no discriminatory intent, the
9 absence of data?

10 MR. DUNN: Object to the form of the
11 question. Misstates the testimony.

12 You can answer, if you can.

13 A. The absence of data to me is the report. If
14 someone asks for the data and you can't supply the data
15 and you are trying to propose a bill that I think would
16 have a disparate impact on people of color, to me that
17 says you know it's going to have a disparate impact and
18 you just don't care.

19 Q. (BY MR. SWEETEN) 2007, what -- did your staff
20 make a request in 2007 to the DPS for data regarding the
21 discriminatory effect that that bill may have?

22 A. In 2007, the bill didn't pass the Senate. I was
23 on the State Affairs Committee. You know, you would
24 have to go back and check the transcript. It would be
25 pretty common -- if you check it, I suspect either I

55

1 A. If I may, respectfully.

2 Q. Sure.

3 A. What I'm saying to you, Patrick Sweeten, is that
4 on a major piece of legislation, on most pieces of
5 legislation, if I think it has a chance of passing and I
6 am going to vote on it -- and I haven't missed many
7 votes -- I'm going to know as much as I can to argue my
8 side and I'm going to know as much as I can to argue the
9 other person's side but I don't want to be in a position
10 where you're asking me who did I call in 2005 and who
11 made the call and what did they say and can I quantify
12 it. I'm just telling you that I think my reputation is
13 one of being a fairly serious Legislator and having a
14 pretty good staff.

15 Q. Yes, sir. And what I'm trying to get to, though,
16 is just the facts that support your opinion that this
17 bill had a discriminatory effect. And I think what I'm
18 hearing you say is that a request was made in 2011,
19 right?

20 A. That's correct.

21 Q. To Senator Fraser?

22 A. That's correct.

23 Q. There was no data provided to you?

24 A. That's correct.

25 Q. That is the data that you had for 2011, or lack

54

1 asked or somebody would have asked in committee if the
2 bill was heard in State Affairs.

3 Q. You don't know one way or the other as you're
4 sitting here about 2007?

5 A. No.

6 Q. So, you don't know if you looked at any data at
7 that time? Or the absence of data -- you don't know if
8 a request was ever made at that time?

9 A. Here's my assumption: Before I argue against
10 somebody's bill or decide on a bill that's important to
11 one of my colleagues that I'm for it or against it, I'm
12 going to know as much as I can.

13 Now, because I do a few things other than Senate
14 Bill -- House Bill 218 and Senate Bill 362, if you are
15 asking me for the record, to go and point to who I
16 asked, when I asked, what the hell they gave me, I have
17 no earthly idea.

18 Q. Is it a fair statement that in 2005, you did not
19 ask for any data?

20 A. No, that's not a fair statement.

21 Q. You asked for data?

22 A. No, that's not a fair statement.

23 Q. Okay.

24 A. Let me finish.

25 Q. Go ahead.

56

1 of data?

2 A. I had that and I also can recall conversations
3 with Legislators in Georgia. I think I called a couple
4 of members in Indiana or the legislation either had
5 passed -- I think it had passed in Indiana and it had
6 passed in Georgia but it was tied up in courts but I was
7 pretty thorough about calling people around the country
8 to ask, "What do you have?" I was pretty methodical
9 about, "What do you have? Can it be quantified? Am I
10 worried about something based on my instincts or is
11 there something there?"

12 Q. So, what did you get?

13 A. The response I got back was, "Heck, yeah, you
14 ought to be worried because, by and large, what they're
15 telling us is that they don't know and they don't care."

16 Q. So, there was no data given to you from those
17 sources either?

18 A. No.

19 Q. You didn't have any data in 2005, 2007, 2009 or
20 2011 other than the lack of data?

21 A. I prefer to focus primarily on 2011 because my
22 memory serves me a little better from last session than
23 a couple of sessions back.

24 Q. Okay.

25 A. But the general response on the floor from

57

1 Senator Fraser was about what we were getting when we
2 would ask for data on our own, "We don't know." He
3 referred everything to the Secretary of State.

4 Then I did a fairly detailed letter, as I recall,
5 which I'm sure you've seen, asking the Secretary of
6 State a lot of those questions.

7 Q. And that was in the 2011 session you made the
8 request to the Secretary of State for information?

9 A. I don't know if I did it during the session or
10 after the session but a pretty detailed -- you know, I'm
11 sure I had a Cracker Jack staffer, probably sitting in
12 here, who did a lot of work on the request.

13 Q. And when you -- did you receive data from the
14 Secretary of State to review related to the
15 discriminatory effect of this bill?

16 A. It was pretty sketchy.

17 Q. Well, what did you receive?

18 A. I'd prefer to pull it for you and let you go
19 through it.

20 Q. Okay. Can you? Let's do that.

21 THE WITNESS: David, you don't have to pull
22 it now but you can send that to him. You know what I'm
23 talking about, right?

24 A. David Edmonson.

25 Q. (BY MR. SWEETEN) Let's pull it now. We're here

58

1 in your office.

2 A. He'll try to find it.

3 Q. And whatever David is going to look for would
4 have been produced in 2011 to you; is that right?

5 A. I think so.

6 Q. Is that after the passage of the bill?

7 A. You know, I don't know.

8 Q. Well, it sounded like you said earlier you wrote
9 them after the passage of the bill.

10 A. I probably did. I'm sure I asked before.

11 Q. Okay.

12 A. And then -- I can just remember sitting with my
13 staff one day and, you know, speculating on why Troy
14 didn't know a lot of this stuff. And I think that's
15 when we came up with the idea -- I don't know what we
16 did. We're going to write the Secretary of State and
17 say give us a breakdown on all of this.

18 Q. So, the reasons that you believe Senate Bill 14
19 has a discriminatory effect is, one, you've talked to
20 your constituents, two, the absence of data that you've
21 attempted to uncover in your investigations, three, the
22 history of discrimination in Texas --

23 A. Against minority voters.

24 Q. -- against minority voters and, four, you
25 indicated there were some press reports, is that right,

59

1 that you've reviewed, something about El Paso? I want
2 to talk about that is why I'm asking.

3 MR. DUNN: And communications with other
4 Legislators from other states.

5 Q. (BY MR. SWEETEN) Okay. Have I got the reasons
6 you believe that this bill has a discriminatory effect
7 on minorities in that grouping of five reasons?

8 A. If I reflect on it, I may think of some others
9 but at least those five.

10 Q. And so, the communications with Senators, you've
11 referenced communications on the floor, are those the
12 communications you're referring to is communications
13 that occurred on the floor of the Senate?

14 A. On the floor and in private conversations.

15 Q. Let's talk about first on the floor. I think
16 you've referenced that you think you asked Senator
17 Fraser on the floor what is the effect, and I think
18 you've testified that he indicated on the floor, he did
19 not know, correct?

20 A. Pull the record. If I didn't ask, one of my
21 colleagues asked. It blurs after a while.

22 Q. Whether you did or someone else, you believe that
23 was asked, you believe the answer was there was no
24 information on that given?

25 A. The answer was, "I don't think so," and someone

60

1 would have said -- I or someone else -- "Well, can you
2 quantify it? Can you give us information? What do you
3 base that on?"

4 "Well, I remember that to the Secretary of
5 State."

6 It was a running joke. And I'm sure you can go
7 back and review the record of my friend and my desk mate
8 about that. It was such a running joke about referring
9 to the Secretary of State, throughout the remainder of
10 the session, when something would come up, we would joke
11 with Troy about maybe we ought to call the Secretary of
12 State.

13 Q. Okay. Communications that you had with Senator
14 Fraser, were those all on the floor, those that would
15 lend support to your belief that this had a
16 discriminatory effect?

17 A. No. Some in private with desk mates. It's a
18 close club.

19 Q. With respect to your communications with
20 Mr. Fraser, I want to ask you are you saying that those
21 occurred while you were on the floor of the -- since
22 you're desk mates, most of the communications you're
23 referring to would have occurred on the floor of the
24 Senate?

25 A. Not all of them. We're good friends. We talk.

61

1 Q. It's not your belief that Senator Fraser knew or
2 thought that this bill would have a discriminatory
3 effect on minorities?
4 A. I think he knew it.
5 Q. And why -- is that based upon the fact that there
6 was a lack of evidence?
7 MR. DUNN: Now, are you asking him to
8 disclose communications now with Senator Fraser?
9 MR. SWEETEN: I'm asking him this is his
10 opinion outside of specific --
11 Q. (BY MR. SWEETEN) Based upon your discussions
12 with Mr. Fraser, is it your characterization that the --
13 and I'm not asking for a specific substance of the
14 communication. I'm asking you what is your opinion
15 about why you think that this bill has a discriminatory
16 effect?
17 A. I think he knew that the bill would have a
18 discriminatory effect. I think he knew it. And I also
19 think he didn't really want to carry the bill.
20 Q. He never -- you're indicating -- wait a minute.
21 Let me ask you that.
22 What makes you think that he never wanted to
23 carry the bill?
24 A. Because he told me.
25 Q. Again, my instruction is I don't want to know

62

1 specific communications you and Senator Fraser have had.
2 He claimed the legislative privilege.
3 A. I'm sorry. I don't mean to interrupt you but you
4 asked.
5 Q. What I instructed you earlier was if you've had a
6 communication, to just identify the communication, that
7 there were communications. I don't want to know the
8 substance of those.
9 A. I had communications with more than one member of
10 the Senate who said -- so, I'm not necessarily talking
11 about one session -- who said they did not want to carry
12 the bill but they drew the bean, they were instructed to
13 do it.
14 MS. MARANZANO: This is Jennifer. I just
15 want to say for the record about the instruction that
16 you're giving Senator Ellis that it's our position that
17 those Legislators who have not affirmatively invoked the
18 legislative privilege have now waived it.
19 MR. SWEETEN: I'm sorry. Senator Fraser has
20 invoked the privilege.
21 MS. MARANZANO: I know but I just want to
22 say that about the larger instruction that you're giving
23 because I believe you handed him a document that has a
24 list of people who have affirmatively waived but our
25 position is that those who have not affirmatively

63

1 invoked the privilege have now waived it.
2 MR. SWEETEN: Well, I mean, fair enough.
3 You've made the record clear as to what your position
4 is.
5 Q. (BY MR. SWEETEN) My instruction -- and it
6 continues to be -- that I don't want you to reveal the
7 specific substance of communications that were not of
8 public record with anybody that's either affirmatively
9 waived the legislative privilege or anyone not on that
10 list.
11 MR. DUNN: And just to be clear, we
12 continuously object to the instruction insofar as it
13 requires the Senator to give an inaccurate account as to
14 his opinions or conversations but we'll attempt to abide
15 by the instruction as is reasonable or possible.
16 Q. (BY MR. SWEETEN) So, we've gone over the reasons
17 you believe this has a discriminatory effect. Now, is
18 it a true statement that you have not reviewed specific
19 data that shows a quantitative breakdown of the impact
20 that Senate Bill 14 may have on racial minorities?
21 A. I have reviewed some -- I have seen reports on
22 the number of African Americans and Hispanics who have
23 lost their driver's licenses, as an example.
24 I don't have specific data on -- I don't know if
25 it's laying around here somewhere. I don't know if I

64

1 have any specific data on the number of African
2 Americans and Hispanics in Texas who have some other
3 form of government ID.
4 Q. What have you seen?
5 A. Well, I've seen reports on that. I don't know
6 specific ones but I'd have to go pull them.
7 Q. Who generated the reports?
8 A. I've seen some press accounts. I don't know the
9 specifics on it. I could go dig around. I know I've
10 asked periodically what can you show me here or in other
11 states that would either give me a comfort level as we
12 were going through the process to vote for this when my
13 colleagues would ask, trying to find some consensus, or
14 ask another side can you give me stuff so I can quantify
15 it so I can go say to them, "This is what you're doing.
16 Do you care?"
17 And so, what I'm saying, I don't know the
18 specifics of it. You can go pull it. You can get on
19 the Internet, Google in and see whatever you can dig up,
20 and most of it is pretty sketchy, I think, the last
21 discussion that I've had on it.
22 Q. So, with respect to any information you've seen
23 that reflects the discriminatory effect of Senate Bill
24 14, you're indicating that you've -- it would be
25 something that you've reviewed on -- through Internet

65

1 searches about its potential effect and not any specific
 2 data other than what's publicly available?
 3 A. I'm saying it's been all over the board if you go
 4 look at the debate. My folks who were pushing the bill
 5 couldn't go in there and come up with a report and say
 6 this is not a problem because here's our report that
 7 shows everybody has a driver's license, if not, it's
 8 easy to get one, and then on the other side, it was
 9 difficult for us to go make our case because there was
 10 very little data on it.
 11 Q. Have you ever seen data that indicates the
 12 percentage of Hispanics or African Americans that would
 13 be impacted as a result of the passage of Senate Bill
 14 14?
 15 A. I've seen -- I don't know specifics but I've seen
 16 data that appears rather speculative, sort of spotty.
 17 Q. Where did you see that data?
 18 A. I've seen it in press accounts. I've seen
 19 whatever my staff could pull together from asking the
 20 state agencies, show me one way or the other, and I'm
 21 saying to you it's been pretty spotty.
 22 Q. Okay.
 23 A. For this deposition, I didn't go pull some report
 24 and put it in front of me to look at.
 25 Q. Can you cite for me as you're sitting here how

66

1 many or what percentage of Hispanics, African Americans,
 2 Anglos will be impacted as a result of Senate Bill 14?
 3 A. No.
 4 Q. Do you have any opinion as to the percentage
 5 of -- based upon any data that you've reviewed, do you
 6 have any opinion on what percentage of African Americans
 7 or Latinos will be impacted by Senate Bill 14, as
 8 opposed to Anglos?
 9 A. No. I wouldn't want to guess.
 10 Q. Okay. And, in fact, there's no specific data
 11 that you've reviewed that has provided that information?
 12 A. I have been -- I have been told by number
 13 crunchers that it will have a disproportionate impact on
 14 African Americans and Hispanics, and I've been advised
 15 that based on the number of blacks and Hispanics in
 16 Texas in particular who have lost their driver's
 17 licenses because of fees that we have passed when people
 18 get tickets for not having their seatbelts on, that most
 19 of those folks who are in the queue to pay these fees to
 20 get their licenses back are people of color.
 21 Q. Who told you that?
 22 A. My staff and --
 23 Q. And what did they show you?
 24 A. Press accounts. I can't remember if I saw a
 25 specific report on it. I'm sure I've asked. I just

67

1 can't remember.
 2 Q. So, you've read press accounts on the alleged
 3 discriminatory effect on Senate Bill 14; is that right?
 4 A. On the number of people who have lost their
 5 licenses because of fee bills we have passed.
 6 Q. Okay. So -- and that's not specifically analysis
 7 as to Senate Bill 14, you're indicating that you've seen
 8 data that indicates people lose their licenses as a
 9 result of other legislation at a higher rate that are
 10 African American or Latino?
 11 A. Senate Bill 14 zipped out of the Texas Senate so
 12 quickly with a majority vote, with so little thought
 13 that there was very little data put together about the
 14 impact of it because the folks who wanted it passed
 15 either didn't know or if they did know, they didn't want
 16 somebody to be able to make the case how bad it was or
 17 they just didn't care.
 18 Q. Senate Bill 14 didn't really pass that quickly,
 19 did it?
 20 A. It passed quick enough. Faster than what the
 21 budget passed.
 22 Q. Well, would you agree that Senate Bill 362 in
 23 2009 was textually the same bill?
 24 A. No. I think it got a little worse.
 25 Q. Okay.

68

1 A. It got a bit more onerous.
 2 Q. Would you agree that there was significant --
 3 A. I'd have to go back and pull the comparison.
 4 Q. Would you agree that there was significant debate
 5 in 2009 regarding the issue of voter ID?
 6 A. Yes.
 7 Q. Okay. Would you agree, in fact, that there were
 8 sessions that occurred in excess of 24 hours in the
 9 Committee of the Whole in 2009 regarding the issue of
 10 voter ID?
 11 A. Yes.
 12 Q. It was -- the issue of voter ID had not only come
 13 up in 2005, 2007 and 2009 but then once again it came up
 14 and was passed in 2011, right?
 15 A. It was rammed through in 2011.
 16 Q. It was -- Senate Bill 14 was made an emergency
 17 item for consideration by the Senate, correct?
 18 A. By the Governor.
 19 Q. The Governor indicated -- or called Senate Bill
 20 14 emergency legislation, correct?
 21 A. You said the Senate did it. No, the Governor did
 22 it.
 23 Q. I don't think I said that but that may have been
 24 how you interpreted it.
 25 So, the Governor declared it emergency

69

1 legislation. It was heard in January of 2011 in the
 2 Senate Committee of the Whole proceedings, correct?
 3 A. I think that's right.
 4 Q. Now, the Senate Committee of the Whole is a
 5 procedure that is employed that allows -- rather than
 6 having a Senate committee of ten individuals sitting on
 7 the committee, it allows each member of the Senate to
 8 participate in the process, correct?
 9 A. That's correct, among other things.
 10 Q. And among those other things is that it is a more
 11 open process --
 12 A. No.
 13 Q. Let me finish -- it is a more process from the
 14 standpoint that you have all Senators that sit as a
 15 committee rather than having a committee hear it and
 16 then pass a bill out for further consideration of the
 17 Senate, would you agree with that?
 18 A. No.
 19 Q. You don't believe that because 31 Senators can
 20 have input in the committee hearings that that makes it
 21 a more open process than if you have a committee with a
 22 smaller number of Senators, with many not participating?
 23 A. No, I don't.
 24 Q. And why would that be?
 25 A. Based on my 22-year experience of being in the

70

1 Senate, passing 500 bills, if any member of the Senate
 2 wants to participate in any committee, they walk in and
 3 do it.
 4 Based on my experience, if a bill goes through a
 5 normal committee process, it generally gets vetted in a
 6 lot more detail than you do in Committee of the Whole.
 7 In Committee of the Whole, based on my
 8 experience, that has generally been the procedure used
 9 when you really want to rush something through the
 10 process and get it over with and you don't want to run
 11 the risk of any parliamentary maneuvers like some point
 12 of order on something that is done in the committee
 13 before it goes to the Committee of the Whole.
 14 If that were not the case, they would take the
 15 darn budget through the Committee of the Whole. I can't
 16 think of anything that would be more important for every
 17 member to weigh in on than the budget.
 18 Q. Okay. Let's go back to the affidavit. Let's
 19 talk about paragraph 6. It says, "On February 17, 2009,
 20 Senate Bill 362, a bill that imposed certain photo
 21 identification requirements on voters, was referred to
 22 the Committee of the Whole Senate. Senate Bill 362 was
 23 authored by Senator Troy Fraser, who is white. The
 24 Senate passed Senate Bill 362 by a simple majority. The
 25 House did not pass this legislation."

71

1 Any opinion as to why the House didn't pass the
 2 legislation or do you not follow that?
 3 A. Procedurally, I think the way it died that
 4 session was because of a procedure called chubbing, so,
 5 parliamentary maneuvers to kill it.
 6 Q. Okay. In 2009, the Committee of the Whole
 7 considered the bill, correct?
 8 A. Say it again.
 9 Q. In 2009, in the Senate, the Committee of the
 10 Whole considered Senate Bill 362, correct?
 11 A. That's correct.
 12 Q. Would you agree that both sides were able to
 13 provide their full position regarding the bill during
 14 the some 24 hours plus debate on the Senate floor?
 15 A. No.
 16 Q. Okay. Would you tell me what is it that you
 17 believe wasn't expressed on the public floor that -- or
 18 let me just ask another question.
 19 Were you restricted in any way from providing
 20 your opinion on the bill?
 21 A. The public was.
 22 Q. Do you want to tell me how did that happen?
 23 A. Because if it had gone through a normal committee
 24 process where you post a bill, if somebody wanted to tag
 25 it, which means delay it, to give someone more time to

72

1 get word out to the public so they could get to the
 2 Capitol and testify -- showing up to the Capitol, for
 3 somebody who doesn't work there, can be a rather heady
 4 experience. It can be a very intimidating process.
 5 To come and testify before the Committee of the
 6 Whole, when we went through that, it was more like -- it
 7 was more of the kind of orchestrated experts from both
 8 sides, so-called experts, the party operatives from both
 9 sides, as opposed to real folk who might be impacted.
 10 Q. Who specifically didn't get to come testify, in
 11 your view, with respect to Senate Bill 362 in 2009?
 12 A. Well, I guess that 30, 40, 50 percent of the
 13 people in El Paso County who have a warrant out for them
 14 because they owe on tickets, whatever the percentage is
 15 here in Harris County but my sense was once the decision
 16 was made that the bill would pass by a majority vote
 17 with a special order provision, a majority vote instead
 18 of the normal two-thirds provision, it was pretty much a
 19 fait accompli.
 20 The folks in charge knew that they had the votes
 21 to pass it. They had a mandate from their base to pass
 22 it. They had people who were worried about the growing
 23 influence of Texas now being a majority minority state.
 24 They had a mandate to get it done. So, a lot of people
 25 who would have come didn't come because they kind of

73

1 figured why, in my humble opinion.
 2 Q. So, you're saying there are people in the general
 3 population who had such an understanding of the
 4 Committee of the Whole proceeding, knew where the votes
 5 lay in 2009, and they knew that their voice would not be
 6 heard, and so, they didn't come in 2009?
 7 A. I'm saying people in the public wouldn't know
 8 what a Committee of the Whole is from whatever the
 9 committee is.
 10 Q. So, what prevented people from coming? Who
 11 didn't get to participate in the process, in your view?
 12 A. The fact that it came zooming through the process
 13 in Committee of the Whole on February 17th -- usually
 14 people -- this is a part-time job. We meet 140 days
 15 every other year.
 16 In January and February, you know, it's just
 17 gemming up. When you're more apt to really having
 18 people angry, paying attention, excited, happy, pleased,
 19 knowing what we do, it's going to be after the press has
 20 pretty much really whipped it up or made the case and
 21 they know where we are. For a year and a half, people
 22 think we are in Washington instead of in Austin.
 23 After we've been there and they've been reading
 24 it in the paper, seeing it on TV, hearing it on the
 25 radio January, February and March, around about April

74

1 and May, things get a little -- you hear from folks that
 2 you didn't know existed is what I'm saying, when you go
 3 through what is called the normal process, just in my
 4 opinion, based on my experience.
 5 Q. Surely that was alleviated by the fact that the
 6 bill didn't pass the House and that voter ID had another
 7 two years to make its way to the 82nd Legislature,
 8 correct?
 9 A. I don't think there was a lot heard about -- I
 10 don't think there was a lot of public input in this
 11 bill. I don't think people got to hear a lot about this
 12 bill, as evidenced by when it did pass, the author of
 13 the bill was referring all of the questions to the
 14 Secretary of State.
 15 Q. On the floor, you're indicating on the floor?
 16 A. Yeah.
 17 Q. Okay.
 18 A. I'm saying, obviously, if he didn't know and
 19 you're asking me what the hell do I know, the burden is
 20 not on me. I wasn't the one trying to pass the bill.
 21 Q. But the bill passed by majority in 2009, 362 from
 22 the Senate, correct?
 23 A. It certainly was one of those rare bills -- let
 24 me finish -- that passed the Texas Senate by a majority
 25 vote.

75

1 Q. And the -- in other words, more Senators voted
 2 for the bill than voted against?
 3 A. It was one of those bills where truly the
 4 minority was heard, meaning minority in the Senate, not
 5 minority in terms of people of color. It was one of
 6 those rare bills -- if you go back and check the record
 7 in the history of the Texas Senate, it was one of those
 8 rare bills that didn't have a two-thirds vote.
 9 Q. But it certainly wasn't passed by minority, it
 10 was passed by majority, wasn't it?
 11 A. It was passed by members of the Senate who do not
 12 represent majority minority districts.
 13 Q. It was passed by a majority of Senators. It
 14 passed, did it not, by a majority of Senators?
 15 A. I think I answered that.
 16 Q. Okay.
 17 A. Let me finish. It was one of those few bills
 18 that passed the Texas Senate without a two-thirds vote.
 19 It passed by a majority vote.
 20 (Short recess.)
 21 Q. (BY MR. SWEETEN) Okay. Let me just go back over
 22 the issue of legislative privilege because I just want
 23 to make sure that we're on the same page and that
 24 everything clear.
 25 When we were talking earlier -- and I'm just

76

1 going to reiterate it -- that is, that the legislative
 2 privilege has been asserted by a number of individuals
 3 in this case, and so, to the extent that I'm asking you
 4 questions as we go along about any conversations, don't
 5 reveal the substance of those communications but you can
 6 just reveal whether or not a communication did occur.
 7 Okay. Are you still clear on that instruction?
 8 A. Okay.
 9 MR. DUNN: Just so we understand on that
 10 instruction, we're generally okay with that but every
 11 once in a while you'll say, "Are those all of the
 12 reasons that you have this opinion or that opinion," and
 13 he may be thinking of a conversation with a Legislator
 14 that may or may not have invoked the privilege, plus,
 15 there are a number of Legislators who haven't invoked
 16 the privilege and haven't stated one away or the other.
 17 MR. SWEETEN: Okay. On that issue, what I'm
 18 trying to do is just have him reveal whether a
 19 communication occurred that is the support of that.
 20 Q. (BY MR. SWEETEN) And if you can just tell me
 21 that rather than tell me the substance of it.
 22 MR. SWEETEN: And then with respect to the
 23 prior comment, I think there was one instance where that
 24 came up. I'm going to move to strike that portion of
 25 the answer with respect to that issue.

77

1 A. If you strike that part -- I don't want to
 2 interrupt you but if you ask me a question --
 3 Q. (BY MR. SWEETEN) It's just I'm moving to. It
 4 doesn't mean that I -- I don't have the power --
 5 A. Okay.
 6 MR. DUNN: You have preserved your position
 7 to remove it. We oppose the removal of it, and the
 8 Court will deal with it.
 9 MR. SWEETEN: Fair enough.
 10 A. If you ask me why do I think of something and
 11 it's based on a conversation and I say, well, because
 12 somebody said it and then you don't want me to say who,
 13 I mean, how do I --
 14 Q. (BY MR. SWEETEN) Well, I mean, if there is such
 15 a communication, I'd like you to identify who the
 16 communication is with but not reveal the specific
 17 substance of it. We'll go -- it will be question by
 18 question but if that comes up, then I want you to
 19 address that issue and let's discuss it. Okay?
 20 Otherwise --
 21 A. So, I can talk about a conversation but not with
 22 who?
 23 Q. Well, you can --
 24 MR. DUNN: You can talk about with who and
 25 when but not the context of it, what was said.

78

1 Q. (BY MR. SWEETEN) Yes, don't say what was said.
 2 A. Okay. I'm sorry. I thought you all were trying
 3 to get to the truth.
 4 MR. DUNN: One of the other lawyers may
 5 choose to follow up today and ask you what was said.
 6 Q. (BY MR. SWEETEN) And, of course, in that case,
 7 we are asserting legislative privilege on that. So,
 8 we're just having all kinds of fun, Mr. Dunn and I.
 9 A. I'm sorry. I thought you guys were trying to get
 10 to the truth. Put that in the record.
 11 Q. We definitely are trying to get to the truth
 12 here, and that's why we're going to depose you but just
 13 as -- you're an attorney. So, just as the
 14 attorney/client privilege is something that is preserved
 15 under law, legislative privilege is also similarly
 16 protected by our courts and has been held in this case
 17 it is protected.
 18 We talked prior to the break about the Committee
 19 of the Whole proceeding, and I want to ask you -- I'm
 20 going to hand you a copy of -- this is an excerpted copy
 21 from the Committee of the Whole proceedings that
 22 occurred January 25th, 2011.
 23 (Exhibit 3 marked.)
 24 Q. (BY MR. SWEETEN) And we talked about your
 25 communications with Senator Fraser --

79

1 MR. DUNN: Just for the record, we've marked
 2 this as Exhibit 3?
 3 MR. SWEETEN: Yes, marked as Ellis
 4 Exhibit 3.
 5 Q. (BY MR. SWEETEN) Okay. Have you had a chance to
 6 read it?
 7 A. Yes.
 8 Q. Okay. Now, this is an excerpted portion of the
 9 Committee of the Whole Senate proceedings from Tuesday,
 10 January 25th, 2011, correct?
 11 A. Uh-huh.
 12 Q. Is that yes?
 13 A. Yes.
 14 Q. And this indicates a discussion that you and
 15 Senator Fraser had on the floor of the Senate on
 16 January 25th, '11, right?
 17 A. Yes.
 18 Q. And, in fact, I want to read to you a colloquy
 19 between you and Senator Ellis -- I mean, and Senator
 20 Fraser. You indicated, "Are you confident, Senator,
 21 that your bill would not have a disparate impact on the
 22 elderly, on women, on those that are physically
 23 challenged, on racial ethnic minorities?"
 24 Senator Fraser says, "I am" --
 25 And you said, "Are you confident?"

80

1 And Senator Fraser says, -- "absolutely sure. I
 2 would not have filed the bill if I had thought it -- I
 3 want to make sure that every person in the state has a
 4 right to vote. The -- not -- you know, the right that
 5 we extend them, they should have that, and I do not
 6 believe that in any way we're impacting that and that --
 7 that -- you know, I want to make sure that the groups
 8 you're talking about, you know, women, minority,
 9 elderly, that they all have the right to vote, and I
 10 believe my bill does that."
 11 And then what did you respond when Senator Fraser
 12 said that?
 13 A. I was polite, as I am normally.
 14 Q. No. No. The first question is what did you say
 15 in response?
 16 A. I said, "Okay. And I know that's your intent."
 17 Q. And so, you said on the Senate floor on
 18 January 25th, 2011 that you knew that Senator Fraser's
 19 intent was to not impact the groups including women,
 20 minority, elderly and preserving their right to vote?
 21 A. I did say that but I didn't mean it.
 22 Q. Okay.
 23 A. It was mere political talk. Do you ever wake up
 24 in the middle of the night and watch C-Span and you hear
 25 say the gentleman or the gentlewoman? They don't mean

81

1 it.
 2 Q. I just want to be clear that when you told
 3 Senator Fraser in the Committee of the Whole proceedings
 4 that you didn't believe that his intent was to impact
 5 the right of women, minority and elderly to vote that
 6 you were not telling the truth?
 7 A. She might want to read the record back to you.
 8 You got it backwards.
 9 Q. All right.
 10 A. You meant to say, "Senator Ellis, were you
 11 lying?"
 12 Yes. I was being polite.
 13 Q. Okay. So, you were lying when you said that?
 14 A. Yes, I was.
 15 Q. Okay.
 16 A. I was being polite to hopefully put my colleague
 17 at ease and hope that I could get him to vote for the
 18 amendment.
 19 If you continue to read through it, what I
 20 said -- pretty much, I was trying to set him up so that
 21 if you agree -- you're saying that was not your intent,
 22 and I'm saying, "Okay. That was not your intent. So,
 23 why don't you let me add this amendment so we can have
 24 the Secretary of State give us a breakdown on all of
 25 these factors."

82

1 Now, you probably don't go to the rest of that in
 2 the record but I offered an amendment, and he objected
 3 to it, and it was voted down, simply saying go do a
 4 report on it.
 5 Q. Is there anywhere else on the transcript of the
 6 2011 Committee of the Whole debate that you lied?
 7 A. Not that I can think of right away. When I say I
 8 lied, I was being polite. It's just like saying would
 9 the gentleperson do this, would the gentleman do that.
 10 I suspect if you read through the rest of the
 11 transcript in there, including my closing comments,
 12 you'll hear me say that I think this bill discriminates
 13 and either you all don't know or you don't care.
 14 Q. Now, is it a foreign concept to you for a
 15 Legislator to want to move a bill that they think is
 16 important to them through the House or Senate quickly?
 17 A. Is it a foreign concept?
 18 Q. Yes. I mean, do you -- when you're passing
 19 legislation that you think is important to you or to
 20 your constituents, do you have any problem with
 21 attempting to move quickly under the procedural rules?
 22 A. No.
 23 Q. Okay. And, in fact, it's a good thing for your
 24 legislation to move your legislation quickly so that it
 25 gets passed?

83

1 A. Particularly all of my good legislation.
 2 Q. And so, it is a motivation and goal that you have
 3 when you're passing legislation that you feel like is
 4 important to you to move it quickly?
 5 A. Well, my problem with motivation would be to move
 6 it quickly if I think that it's controversial and
 7 somebody might come up with some good questions to ask
 8 that would put it in jeopardy. If you think you have
 9 the votes and I think it's controversial, anybody thinks
 10 it's controversial, you want to move it as quickly as
 11 you can before somebody figures out what bad stuff is in
 12 it.
 13 Q. When you do it -- and you do it, you move
 14 legislation as quickly as you can if it's important to
 15 you, correct?
 16 A. I can assure you anything I move is vetted,
 17 looked at, all the Is are dotted and all the Ts are
 18 crossed. I have to essentially bend over backwards if
 19 I'm trying to pass something to honor you for your fine
 20 work. It will be thoroughly vetted if it has Ellis on
 21 it, trust me.
 22 Q. And I understand. That's a separate question
 23 than the one I asked you. The question I'm asking you
 24 is when you have legislation that you've vetted and is
 25 important to you, you endeavor to move that legislation

84

1 quickly?
 2 A. It's been so long since I had a bill move through
 3 quickly, I wouldn't know what to do if one passed
 4 quickly.
 5 Q. And that's why?
 6 A. Because usually I carry bills that I have to
 7 develop a consensus on.
 8 Q. Because your --
 9 A. And because I don't want the reputation that I
 10 try to move something through when I -- even when I had
 11 more votes on my side, that somebody would regret later
 12 and then resent me when I'm trying to get them to vote
 13 for something else down the road. I carry stuff that
 14 might be a bit more ahead of its time.
 15 Q. Okay. But when you're moving legislation, you're
 16 attempting -- it is a motivation of yours to move it
 17 quickly, you've already said that, right?
 18 A. No. Usually my motivation is to get the
 19 two-thirds. So, mine usually doesn't move too quick.
 20 Q. Is there anything wrong with a Legislator
 21 attempting to move their bills quickly --
 22 A. Depends on the bill.
 23 Q. -- to get them passed?
 24 A. It depends on the bill and the reason that
 25 someone is trying to move it likely. There are people

85

1 who try to move stuff quickly because they hide stuff in
2 the bills or there are people who move stuff quickly
3 because they don't know what the hell is in the bill,
4 and there are people who move stuff quickly because they
5 don't really want the public to really realize just how
6 bad a bill may be.

7 Q. So, are you indicating that you, Senator Ellis,
8 don't try to move your bills quickly?

9 A. I'm indicating that I, Senator Ellis, cannot move
10 my bills quickly.

11 Q. And that's been the case all 22 years?

12 A. Yeah, for the most part.

13 Q. Okay.

14 A. I don't carry the -- I generally carry bills that
15 are pretty broad reaching. I'm not -- I don't go in and
16 try to pass the easy stuff. So, it takes a while for
17 people to be persuaded or I have to go through
18 compromises to satisfy concerns that they have.

19 Q. Are you indicating it is not a motivation of
20 yours when introducing legislation to move it through to
21 passage as quickly as possible?

22 A. I just want to get it passed. I'm generally not
23 hung up -- as evidenced by -- I'll pass a bill and
24 somebody in the House might sit on it. Some members
25 would kill that bill. They would let the bill die.

86

1 I'll generally figure out how to get enough credit
2 whether my name is the elite name on it or not.
3 Sometimes I try to put my bills on other people's bills.

4 Q. Now, it's a true statement, though, that if
5 you -- if your bill does not go as quickly as you can
6 make it go, there is a higher chance that it gets hung
7 up towards the end of the session?

8 A. For the bad bills.

9 Q. So, only the bad bills get hung at the end of the
10 session?

11 A. And my bills.

12 Q. Okay. So, you try to avoid that?

13 A. I'm just saying it's been so long since any of my
14 bills have passed quickly in the process over these
15 22 years, I don't know why but, you know, I'm not one of
16 those who -- you know, sometimes to get a bill passed
17 quickly, you have to vote for so much other bad stuff,
18 it's hard to sleep at night. I sleep good.

19 Q. Do you try to move your legislation quickly?

20 A. I try to move it when it's ready.

21 Q. Do you move it quickly when it's ready?

22 A. Rarely.

23 Q. Do you try to move it quickly when it's ready?

24 A. No, not really.

25 Q. Okay. There's just no desire by you to move your

87

1 bills quickly?

2 A. I gave up on that a long time ago. I try to
3 avoid high blood pressure. If you go back and check the
4 record, you will probably find that most of the bills I
5 carry are not coming out early in the session. Usually
6 watching for stuff with my name on it towards the end.

7 Q. Now, 2009 and 2011 weren't the only times where
8 the two-thirds rule was not in effect for a Senate Bill
9 that ultimately passed, do you agree with that?

10 A. That's correct.

11 Q. Okay. Would you agree that Senate Bill 800 in
12 the 67th session by Ogg, a redistricting bill, passed
13 without a two-thirds --

14 A. What year was that?

15 Q. The 67th session.

16 A. What year was that? Was that the year '67?

17 Q. No. The 67th session.

18 A. What year? I don't remember them in terms of --

19 Q. We can do the math. Let's see.

20 A. I don't think -- I don't even know if I even
21 served with Ogg. So, it might have been one session. I
22 just don't do them by 71, 75. What was the last one?

23 Q. 82nd was 2011.

24 A. So, you're going back to --

25 Q. 30 years.

88

1 A. I know it will probably surprise you, Patrick,
2 but 30 years ago, I wasn't in the Senate.

3 Q. I wasn't asking if you were in the Senate. I'm
4 asking you are you aware that Senate Bill 800 in the
5 67th session by Ogg, a redistricting bill, passed
6 without a two-thirds majority?

7 A. No.

8 Q. Okay. Are you aware that House Bill 1400 -- that
9 there was a redistricting bill that also passed without
10 a two-thirds majority?

11 A. What year was that? Or what session?

12 Q. In the 67th session. Do you know if a
13 redistricting bill that year passed without a two-thirds
14 majority?

15 A. No.

16 Q. Are you familiar with --

17 A. Was that a regular session or a special session?
18 Does it say?

19 Q. It says 67th session.

20 A. I know in 2003, one passed without a two-thirds
21 vote because we broke quorum objecting to not having a
22 two-thirds vote.

23 Q. Who was the Lieutenant Governor in 2003?

24 A. David Dewhurst.

25 Q. Okay. And what bill are you specifically

89

1 referring to in '03?

2 A. The redistricting bill.

3 Q. Okay. So, there was a redistricting bill that

4 you're aware of in 2003 that passed, correct, without a

5 two-thirds --

6 A. That's correct.

7 Q. What about House Bills, on House Bill days, do

8 those pass often without a two-thirds majority?

9 A. Not to my knowledge. Now, I don't know if a

10 budget ever passed without two-thirds majority.

11 Q. What about in special sessions, is the

12 two-thirds, quote, tradition utilized in special

13 sessions?

14 A. It is generally.

15 Q. Is it sometimes not?

16 A. Yeah, it was -- on major bills, it was not used

17 for the redistricting session of 2003. That was a

18 special session. And as I mentioned earlier, in that

19 segregation for every session in '57, '59.

20 Q. Okay. Are you aware that a criminal justice

21 bill, House Bill 1922 in the 67th session --

22 A. 30 years ago. What did they do?

23 Q. I'm just asking you are you aware of whether or

24 not it passed with a two-thirds majority?

25 A. No. I didn't come in prepared for a history pop

90

1 quiz on the bills that passed in the Texas Legislature.

2 Q. So, you're not really aware, are you, of how

3 often the two-thirds, quote, tradition has been not

4 employed?

5 A. I'm aware of when the two-thirds tradition has

6 not been used on major bills. I am aware on bills to

7 name the Chicken Shack to Radio Shack, insignificant

8 things of that nature.

9 Q. And what would that be called in that --

10 A. Resolution or some insignificant bill or nobody

11 paying attention. I know that it has been rare in the

12 Texas Senate that a bill has not passed with a

13 two-thirds vote unless it was part of some back room

14 deal where members were saying to the presiding officer,

15 "Just slide this one out. We're not going to raise the

16 issue," or it's been an insignificant bill.

17 Q. Okay. So, as you're sitting here, within the

18 last 30 years, can you tell me how many times bills have

19 been passed not utilizing the two-thirds majority?

20 A. I can pull you a report on it or I can tell you

21 where to get one from.

22 Q. As you're sitting here, can you tell me how many

23 bills fit that category?

24 A. In terms of major bills that have fit that

25 category --

91

1 Q. No. I didn't ask major bills. I'm asking bills

2 that fit that category.

3 A. No. I could refer you to the Secretary of the

4 Senate, not the Secretary of the State. There's a

5 report that she prepared. I think I was the one that

6 may have asked her to do it initially.

7 Q. Do you know if -- by the way, was Lieutenant

8 Governor Bill Hobby a Democrat or a Republican?

9 A. He was a Democrat.

10 Q. Do you know if under Lieutenant Governor Hobby if

11 bills were passed without requiring a two-thirds

12 majority?

13 A. I do.

14 Q. And were they?

15 A. There was a bill -- in terms of minor bills, I

16 don't know but on a major bill, I was on his staff, and

17 they had the infamous killer bee incident, which he was

18 trying to change the date of the Texas primary so then

19 Republican candidate for president, John Connally, would

20 have a better shot at winning -- getting the Texas

21 primary out of the way.

22 So, he was going to move the date, and they did

23 that -- they were going to do it by majority vote. And

24 so, a group of Senators broke the quorum. And I was on

25 his staff. And when they did eventually come back, he

92

1 made the decision to let that bill die or they would

2 have had to have a two-thirds vote to do it.

3 In terms of minor bills that came across, I don't

4 know. There may have been changing Sugar Lake to

5 Kool-Ade Lake or other fairly insignificant bills but in

6 terms of a major bill, since I've been around the Texas

7 Senate as an employee or as a member -- employee in

8 1975 -- to my knowledge, the killer bee incident, moving

9 the date of the Texas primary was the only major bill

10 that passed the Senate without a two-thirds bill under

11 Bill Hobby.

12 Q. The question is about Bill Hobby. That's what

13 you said.

14 A. Yes, Senator Bill Hobby.

15 Q. Okay. What about under Lieutenant Governor Bob

16 Bullock -- what party was he in?

17 A. He was a Democrat.

18 Q. And are you aware of any legislation that passed

19 under Lieutenant -- let me finish -- Lieutenant Governor

20 Bob Bullock without a two-thirds majority?

21 A. I am.

22 Q. Can you tell us what that was?

23 A. I think -- I'm not sure but I think one of them

24 might have been -- it was some bill that the -- might

25 have been redistricting. I'm just not sure. I can't

93

1 think off the top of my head but it was a bill that
2 Republican members of the Senate wanted passed, agreed
3 to it but didn't want to get heat in their party for
4 voting for it. So, they acquiesced, and it passed by a
5 majority vote.

6 And then I can remember a resolution -- not a
7 bill -- a resolution that I carried to force the
8 election of the settlement of a lawsuit on electing
9 judges in Texas from something less than a countywide
10 district.

11 And I remember I had a resolution coming up which
12 was broad enough so that I could put that language in
13 the resolution, and it was the next one -- resolution on
14 the agenda. So, it would not have been breaking the
15 two-thirds tradition.

16 So, I asked for permission to do it, and the
17 Lieutenant Governor called me in his office and said I
18 had the right but I was going to bust that Senate wide
19 open and I needed to think about more than my issue.

20 And I pouted like a young, impetuous Senator but
21 I backed down but when my Republican colleagues -- or
22 some of my colleagues -- there were a few Democrats that
23 didn't like the bill -- thought I was going to bring the
24 bill up on the floor, they walked or they wouldn't come
25 on the Senate floor.

94

1 So, we adjourned without having a quorum that
2 day, and then I negotiated with some of my colleagues,
3 and we came to a conclusion that we would have a vote in
4 Committee of the Whole on my resolution. It was not a
5 bill. I was going to substitute my language into that
6 resolution. So, we did that, and it passed.

7 Q. So, there was a time that you circumvented the
8 two-thirds, quote, tradition?

9 A. I don't want to interrupt you. Were you through?

10 Q. I was.

11 A. The colloquy that I went through was explained to
12 you. I did not have a bill. It was a resolution.
13 Resolutions do not come -- resolutions come in the
14 regular order.

15 So, there was a resolution coming up relating to
16 election of judges. It might have been a resolution
17 saying we ought to do redistricting, which we hadn't
18 done in 20 years, whatever it said, but the caption was
19 broad enough for me to substitute my language which
20 simply said the Texas Senate agreed with the Attorney
21 General's settlement on a redistricting lawsuit
22 involving judicial districts.

23 Parliamentarian and everybody cleared it. In
24 fact, the parliamentarian was the person who told me,
25 "You are a lucky fellow. The next resolution coming up

95

1 a day, two days, is your resolution. That's the next
2 one. You have to substitute it. It is germane. You
3 could pass it."

4 But I backed down when my colleagues objected it
5 although I was not circumventing the rules. I was well
6 within the rules.

7 Q. But you were willing to do, by any means
8 necessary, what you needed to do to pass that
9 legislation you're referring to, which is from 1993,
10 correct?

11 A. No. There must be some part of what I'm saying
12 that you didn't catch. Resolutions pass by a majority
13 vote on a regular basis. If we want to pass a
14 resolution honoring Nelson Mandela -- a resolution
15 passes by majority vote in the Senate. A bill does not.

16 Q. Okay.

17 A. So, I did not have a bill. I had a resolution.

18 Q. So, resolutions, you're indicating, don't require
19 a two-thirds majority?

20 A. That's correct.

21 Q. And haven't?

22 A. That's correct.

23 Q. And you passed -- in fact, that was Senate
24 Resolution 521, correct?

25 A. You're good. How did you know that?

96

1 Q. And Senate Resolution 521, let's talk about that.
2 I'm going to hand you the Committee of the Whole Senate
3 transcript from April 13th, 1993.

4 MR. SWEETEN: I'll ask the court reporter to
5 mark that.

6 (Exhibit 4 marked.)

7 Q. (BY MR. SWEETEN) I want to ask you to indicate
8 what that is, sir.

9 A. Yes.

10 Q. And then I also want her to go ahead and mark
11 this, which is the transcript from the Committee of the
12 Whole where you discuss this issue.

13 (Exhibit 5 marked.)

14 A. Yeah, this is not the judicial one. I think this
15 is -- if I'm reading this correctly, this is not the one
16 that I was making reference to. This is on
17 redistricting.

18 Q. (BY MR. SWEETEN) Well, let me give you more
19 information on it. I've got more.

20 MR. SWEETEN: Can you mark this as Ellis 6.
21 (Exhibit 6 marked.)

22 A. Yeah, because if this was a -- Sibley moving for
23 adoption. Yeah, because on this, I'm speaking in
24 opposition to it. So, I'm not sure what this is.

25 Q. (BY MR. SWEETEN) So, let's start with this: Can

97

1 you identify what Exhibits 4, 5 and 6 are?

2 A. This is a transcript from a vote on the Committee

3 of the Whole on redistricting, ethics and elections from

4 April of 1993.

5 Q. And what is Exhibit 5?

6 A. Committee of the Whole Senate on redistricting,

7 ethics and elections, excerpt from Senator Ratliff's

8 personal privilege speech.

9 Q. Okay. And what is Exhibit -- and by the way,

10 what's the date on Exhibit 5?

11 A. April 13th, 1993. Let me just read this here and

12 see what it says.

13 Q. Sure.

14 A. We didn't keep very good transcripts back then.

15 Okay. Yeah. This part --

16 Q. When you say "this part," which document are you

17 looking at?

18 A. I'm on Exhibit 5. This is the discussion about

19 the judicious election matter.

20 Q. Okay. And can you tell us is this the same

21 matter referred to -- well, first tell us what is

22 Exhibit 6?

23 A. It's a committee report from the Senate on

24 Ellis/Carriker bill, Senate Resolution 521.

25 Q. Okay. So, is Exhibit 6 what is being referred to

98

1 in Exhibit 5 on the transcript?

2 A. Let me read it right here.

3 Q. Okay. Go ahead.

4 A. Okay. Now, if I'm reading this right, so it says

5 here -- and I don't know who did my research. It says,

6 "I was prepared using the rules of this body to get this

7 item up on the floor of the Texas Senate. Now, it would

8 have been an instance in which it would have been the

9 third time in the history of Texas that the blocker bill

10 would have been removed" -- I guess the reference is to

11 a major bill -- "and whether or not we had an instance

12 of members of the Senate boycotting the Senate or

13 prepared using the rules of the Senate to move forward.

14 We tracked down the Attorney General of Texas, pulled

15 him out of a meeting with the Vice President of the

16 United States and asked him whether or not an action of

17 the Committee of the Whole would be sufficient for him

18 to move forward with his settlement as he worked up a

19 settlement. The Attorney General has the right to

20 settle a lawsuit for Texas any day of any week and does

21 not need a formal action or an informal action or a

22 signature or anything from the Texas Senate or the

23 House. There are ways in which we can come back after a

24 settlement and unsettle it. And this lawsuit in

25 Louisiana or in Georgia where the Attorney General and

99

1 Governor worked up a settlement, they went from electing

2 judge to appointing judges in Georgia," blah, blah,

3 blah. So, I think this is it.

4 Q. And what you were reading from just now was

5 Exhibit 5, correct?

6 A. Yes.

7 Q. And what you read from was what you said on the

8 floor of the Senate on April 13th, 1993, correct?

9 A. Yes.

10 Q. And what you were talking about at that time was

11 the issue of Senate Resolution 521; is that correct?

12 A. Appears to be that.

13 Q. And the issue was a judicial election plan; is

14 that correct?

15 A. Yes.

16 Q. And on the floor of the Senate, you said that you

17 were prepared using the rules of this body to get this

18 item up on the floor of the Texas Senate?

19 A. Yes.

20 Q. You said, "It would have been an instance in

21 which it would have been the third time in the history

22 of Texas the blocker bill would have been removed, and

23 whether or not we had an instance of members of the

24 Senate boycotting the Senate or not or just a little

25 late getting down the hall, I don't know but I do know

100

1 that I was prepared using the rules of the Senate to

2 move forward." What did you mean when you said that?

3 A. That -- what I meant was -- I was making

4 reference to, under this being a resolution, that I was

5 going to get around the blocker bill because it was a

6 resolution.

7 My colleagues, who disagreed with me on the bill,

8 and they were not all Republicans, might I add, my

9 colleagues who disagreed with me on the bill felt like

10 my resolution on this settlement was essentially a bill,

11 and my argument was -- and the parliamentarian agreed

12 with me -- it was not a bill, but instead of blowing up

13 the Senate, what I did was go to the Attorney General

14 and say, "Look, you don't need this anyway. You settled

15 the lawsuit. You put in language" -- your Attorney

16 General wouldn't do this, I'm sure -- "you put in

17 language saying that the settlement would only go

18 forward if the Governor, the Speaker, the Lieutenant

19 Governor, the Texas House and the Texas Senate signed

20 off on it."

21 So, then I went to the Attorney General and said,

22 "Will you take a vote from the Committee of the Whole?

23 Because I don't -- I've been advised that I'm within the

24 rules and I can do it but it would blow up this body,"

25 because some of my colleagues felt like you call it a

101

1 resolution that you're amending, we think you're
 2 amending a resolution with what we consider a bill. So,
 3 I backed down.
 4 Q. You were considering utilizing the Committee of
 5 the Whole proceeding?
 6 A. I was a bad, bad boy.
 7 Q. Okay.
 8 A. This is one of the few times in my life that I
 9 was going to do something wrong.
 10 Q. But in --
 11 A. But once I saw it -- I'm sorry to interrupt you
 12 but you interrupted me -- I backed away from it and
 13 decided I would not do it.
 14 Q. Did you say later about the bill that, "I would
 15 have been prepared by any means necessary to change the
 16 unfair way in which people are elected to the judiciary
 17 of Texas"?
 18 A. I would have been prepared until I decided that
 19 it meant more to me to protect the institution of the
 20 Senate than to get my bill passed -- my resolution
 21 passed.
 22 Q. There was a time you were working towards
 23 proceeding with a Committee of the Whole proceeding with
 24 respect to this issue, however, and you --
 25 A. No, that's what I did do. So, in other words, a

102

1 Committee of the Whole -- it was never voted on by the
 2 Senate as a Senate.
 3 Let me get through now and then I'll make sure I
 4 take your questions.
 5 On this one, I think you read it the wrong way.
 6 If you try and draw a parallel to voter ID, they can go
 7 pass a voter ID in Committee of the Whole and never take
 8 it to the floor of the Senate all they want, in
 9 Committee of the Whole.
 10 But what I did was take a resolution that passed
 11 a committee in the House, passed a Calendars Committee
 12 in the House, passed the entire House, and then the onus
 13 was on me with a bill I cared very deeply about to,
 14 within the rules, pass it on the floor of the Senate
 15 with the Senate meeting as a Senate, not as a committee.
 16 And I was told, "Under the rules, you can do that
 17 because it's a resolution but not a bill," by the
 18 parliamentarian. The members could have overruled the
 19 parliamentarian. 16 votes could have overruled the
 20 chair and the parliamentarian. That's what controls the
 21 body.
 22 I was told, "You're going to blow this Senate up.
 23 No matter how strongly you feel about integrating the
 24 judiciary, you ought to think about this, young
 25 Senator," second term there, "You ought to think about

103

1 this and decide whether you really want that."
 2 So, I backed down. It was never voted on in the
 3 Senate as a Senate. The Senate adjourned. The
 4 Lieutenant Governor called us in as a Committee of the
 5 Whole, and I negotiated this with my Republican
 6 colleagues.
 7 So, we met as a committee, just like it could
 8 have -- if the guy had said you can pass it through the
 9 judiciary committee --
 10 Q. You used the Committee of the Whole in 1993?
 11 A. To leave it whole.
 12 Q. You did?
 13 A. For a bill that never went to the Senate.
 14 Q. Did it pass in the Committee of the Whole?
 15 A. It passed in the Committee of the Whole.
 16 Q. What did it pass as?
 17 A. It passed as a resolution in the Committee of the
 18 Whole. It was not a bill, and it never passed the Texas
 19 Senate. And the damn Attorney General didn't need it.
 20 He just wanted cover.
 21 Q. And you made the statement at the time that you
 22 would have been prepared by any means necessary to
 23 change the unfair way in which people are elected to the
 24 judiciary of Texas, that's what you said?
 25 A. That was a great quote. And that other part you

104

1 didn't read in there. You've got to get the feel for it
 2 now, Patrick, when you're in there. I'm waxing
 3 eloquently.
 4 So, the part I didn't say was but I didn't. So,
 5 you go back and look at the tape. So, anyway, I'm
 6 saying I would have been prepared by any means necessary
 7 to do this but I didn't, and why did I not do it,
 8 because of my respect for the institution, with only two
 9 years under my belt being there.
 10 Q. Can you tell us other instances under -- let's
 11 talk about Lieutenant Governor Bullock. We were talking
 12 about him previously. Can you tell us other instances
 13 when the two-thirds, quote, tradition wasn't used?
 14 A. I don't remember the details but when my friends
 15 in the Senate were doing their reredistricting in 2003
 16 and in the back room, we were arguing about do we really
 17 want to disrupt this body and create a tradition where
 18 it's two-thirds whenever the hell, whoever is in charge
 19 wants it. We were debating about whether we get rid of
 20 it or not.
 21 And the presiding officer went and got a report
 22 that I had asked the Secretary of the Senate to prepare
 23 for me to make my case, and it showed a bunch of mamby
 24 pamby votes like the ones I was making reference to on
 25 changing the name of some river, nobody cared, nobody

105

1 asked.

2 And they said that Bullock passed some bill -- I
3 don't know if it was redistricting or what, and some of
4 my Republican colleagues -- I would have been there. I
5 got there a minute before Governor Bullock -- said
6 that -- maybe it was Ike Harris. I don't guess he's --
7 he's using his privilege. I think it was Ike Harris
8 made the comment --

9 Q. You can refer to matters of the public record
10 as -- is Mr. Harris a --

11 A. He's not a Senator. He was a Senate then.

12 Q. Well --

13 A. We'll strike that.

14 A Senator -- how about that -- made the comment
15 that it was something we wanted and we agreed to under
16 the redistricting map but didn't want the heat for it,
17 so, we didn't object to it passing by majority vote.

18 Now, look, I was a baby Senator and, to be honest
19 with you, it would have gone -- I guess it would have
20 been 1991.

21 Q. Okay. Under Bullock?

22 A. Yeah. So, I assume that the three instances I
23 made reference to here would have been -- I don't know
24 if I asked somebody. Usually I make somebody research
25 it. My reference was to major bills. I would have been

106

1 counting segregation forever, maybe that one that was a
2 consensus deal and this being the third time if I had
3 tried to do that.

4 Q. In addition, there were bills under -- there was
5 a bill you've already referenced under Lieutenant
6 Governor Dewhurst in 2003?

7 A. That was the controversial one. That was the one
8 where we did break the quorum, where the quorum was
9 broken.

10 Q. And the two-thirds rule was not utilized for that
11 bill?

12 A. Yeah.

13 Q. And every session, there are bills that pass
14 without a two-thirds majority of the Senate?

15 A. If so, I'm not aware of it.

16 Q. Okay.

17 A. They may -- if so, they must be minor bills. It
18 would be like every day you're supposed to have 30 kids
19 in the classroom, and if nobody takes the roll -- do you
20 know what I mean?

21 Q. What's a House amendment strategy? What does
22 that mean?

23 A. You mean when I made reference to it earlier?

24 Q. No. I'm just asking as a general matter, do you
25 know what a House amendment strategy is?

107

1 A. In what context? It would depend on what context
2 somebody was using it.

3 Q. Are you familiar with the concept that a House
4 bill can be added to a Senate Bill or amended to a
5 Senate Bill with the permission of the Senate Bill
6 author and then that doesn't have to pass with a
7 two-thirds vote?

8 A. I was not aware of it until this last session
9 when they did it with the budget. It was unprecedented.
10 And without calling names because someone may not have
11 waived legislative privilege, there were discussions
12 about that being a very dangerous precedent because,
13 essentially, you take our body to a position of just the
14 majority voting everything. I'm the one that takes the
15 position come on with it. My side will get 16 votes
16 before we get 21 but it just would be disruptive.

17 Most of the bills I carried over the years --
18 hate crimes bill, it took me a decade. Maybe in some
19 ways, it was good it took me a decade because I had to
20 build consensus for it.

21 MR. SWEETEN: I'm going to object to some of
22 that as nonresponsive.

23 Q. (BY MR. SWEETEN) But what I'm asking you is you
24 are familiar with it, you certainly said in the 2011
25 context you're familiar with it with a House member

108

1 amending a Senate Bill without requiring a two-thirds
2 majority, right?

3 A. Are you finished?

4 Q. I am now.

5 A. That was the first time I had heard of it. That
6 is totally different from taking a bill -- taking a bill
7 as an amendment if it is germane and adding it to a
8 House or a Senate Bill but it was certainly
9 unprecedented to take the budget of the second largest
10 state in the country, 15th or 16th largest economy in
11 the world, and amending that to another bill and saying
12 somehow by doing that you avoid a two-thirds tradition.

13 And I think most of my colleagues would say it
14 was unorthodox, unprecedented and something they hope
15 doesn't happen on a regular basis or we're going to reek
16 havoc on the system.

17 Q. You're not familiar, other than that instance, of
18 that occurring?

19 A. That's correct.

20 Q. Okay. And in that instance, that related to the
21 budget, and you're talking about the 2011 budget, which
22 was passed without a two-thirds majority also?

23 A. Correct. Sometimes when you're on beta rules,
24 you essentially have no rules. That's called chaos in
25 most democracies.

109

1 Q. But it's true that the Senate is able -- first of
2 all, let's talk about it this way: Senators are elected
3 throughout the Senate. There are 31 of them. They're
4 elected to go in and serve their constituents, correct?

5 A. That's correct.

6 Q. The Senate is a body. The 31 individuals within
7 the Senate have the absolute right -- you've already
8 testified -- to set up the rules under which they
9 believe that the Senate should operate under, correct?

10 A. That's correct.

11 Q. Okay. And if they have the votes to do so, they
12 are perfectly capable of either suspending the
13 two-thirds rule for all matters or instituting special
14 order procedures to not require a two-thirds vote,
15 correct?

16 A. For people who don't care about tradition, that
17 would be correct.

18 Q. Okay.

19 A. And to be honest with you, as opposed to a system
20 where it's two-thirds when I want to hide behind it --
21 if I want to say I couldn't pass something, we'll have
22 two-thirds, and if I want to say that I wanted to pass
23 something, we'd do a majority -- you take issues like
24 the gambling bill, which I carry on a regular basis, I
25 could pass that by a majority vote. How about the ban

110

1 on statewide smoking in public places? I could pass
2 that by a majority vote.

3 So, I'm one who would argue traditions do matter.
4 In order for a system to work seamlessly, you ought to
5 know what the rules are, they ought to be transparent,
6 same set of rules for everybody but when you pick and
7 choose, I think that leads to -- this is a separate
8 issue but I think that leads to chaos.

9 And what's happening here, particularly on the
10 issue that involves voting, a constitutional right, not
11 a privilege, going back to what this deposition is
12 about, in my humble opinion, when you change the rules
13 to do that, you know, you can read a lot into that.

14 Q. And you do, you read a lot into that?

15 A. Most people do.

16 Q. Okay. But what you read into -- what you're
17 saying is that because -- is it your opinion as your
18 sitting here that because the Senate, which has an
19 absolute right to do it, allowed for -- under 5.11 D
20 allowed for voter identification to be brought to the
21 floor by majority vote, that that somehow evidences a
22 discriminatory intent or purpose or effect of the bill
23 itself?

24 A. I think that what it indicates is that, unlike
25 the level of maturity that a 37 year old second term

111

1 State Senator exercised in backing off of his ability
2 under the rules to pass a resolution, not a bill, to
3 keep from disrupting somebody's perception, not reality
4 then, perception of the traditions of the body, they
5 didn't do it. I did.

6 And down the road in a state that -- whose
7 demographics have rapidly changed, you get some folks
8 who are not as levelheaded as many that we have now, you
9 could really reek havoc on governing the second largest
10 state in the country when you do stuff by any means
11 necessary.

12 MR. SWEETEN: I'm going to object to the
13 answer as nonresponsive.

14 Q. (BY MR. SWEETEN) And I'm going to ask you the
15 following question: Are you indicating that it is your
16 belief that because 5.11 D of the Senate Rules allowed
17 for voter ID to be considered by a majority that that by
18 itself shows a discriminatory purpose, intent or effect
19 of Senate Bill 14?

20 A. I think that and other things show discriminatory
21 effect and purpose.

22 Q. Okay.

23 A. Would you like to object to that as
24 nonresponsive?

25 Q. I'll object when I think it's appropriate.

112

1 A. Okay.

2 Q. Okay. I'm going to hand you the next exhibit.

3 (Exhibit 7 marked.)

4 A. I was reading the prayer. I can go to the part
5 you highlighted.

6 Q. (BY MR. SWEETEN) You can.

7 A. I want to stick on this part here, "Lord, let
8 them do right."

9 Q. I think we should as well.

10 All right. Let's look at the -- and just tell me
11 what this document is. It looks like it's excerpted
12 from the Senate Journal, Monday, May 9th, 2011. Did I
13 read that correctly?

14 A. That's right.

15 Q. And I'm showing you Page 2084, the excerpted
16 portion from the Senate Journal. And I want you to look
17 under the heading Conference Committee Report on Senate
18 Bill 14 Adopted. Do you see that?

19 A. I do.

20 Q. Okay. Now, can you tell us what this reflects
21 regarding Senate Bill 14?

22 A. This reflects the voting on the bill.

23 Q. Okay.

24 A. The conference committee report.

25 Q. So, this is the final vote of the bill?

113

1 A. That's correct.
 2 Q. And you vote here, you vote nay, correct?
 3 A. That's correct.
 4 Q. Okay. And above that are a list of the Senators
 5 who voted yea?
 6 A. Uh-huh.
 7 Q. So, my question I'm going to ask you is which of
 8 these Senators, in your opinion, voted for Senate Bill
 9 14 with a discriminatory purpose? And I want you to
 10 name who those are.
 11 A. Okay. There are 19 Senators here who voted for
 12 it. They are 19 of my dear friends, people who I care
 13 about dearly.
 14 If I had served in the Texas Senate during
 15 reconstruction or in the battle days when we passed the
 16 poll tax, I doubt that I would have singled out any
 17 individual member of the Senate even back then and said
 18 that they were racist or had ill will towards minority.
 19 You just don't do that. You don't get to where I am in
 20 politics by doing that. I'm not going to do that for
 21 you. I'm not going to do that for the Court or anybody
 22 else.
 23 But I think that this bill discriminated --
 24 discriminates against minorities, and I think that my
 25 distinguished colleagues who voted for it knew that they

114

1 were doing the wrong thing. They wanted to do the wrong
 2 thing. I think most of them know that they are going to
 3 be on the wrong side of history.
 4 It doesn't mean that they are bad people. It
 5 just means that they are bad on this.
 6 You can object to it all the hell you want but
 7 I'm not going to single out any of my colleagues but I
 8 think they knew what they were doing, they wanted to do
 9 it and they did it and history will reflect they are on
 10 the wrong side of history.
 11 Q. The question I'm asking is which of these -- let
 12 me finish -- voted yea on Senate Bill 14 as reflected
 13 here with the purpose of discriminating against racial
 14 minorities?
 15 A. I think the best you're going to get out of me --
 16 and you can object to it all you want. That's why I'm a
 17 Senator and a lawyer and an American -- I think that
 18 this bill discriminates. I think they know that this
 19 bill will discriminate against people of color. I think
 20 they knew what they were doing, all of them who did it,
 21 and I think that they wanted to do it. And I think they
 22 will look back one day and tell me that they cast a bad
 23 vote.
 24 Q. You think all 19 passed the bill with the purpose
 25 of discriminating against racial minorities, all 19?

115

1 A. I think either they knew it or they should have
 2 known it. So, either it was a willful indifference --
 3 but I think that they voted the wrong way, and history
 4 will reflect that they voted the wrong way.
 5 Q. I understand you think they voted the wrong way,
 6 and I assume that's why you voted nay. You voted
 7 different than they did.
 8 So, my question to you is which one of those
 9 19 or are you saying all of them passed the bill to
 10 purposefully discriminate against racial minorities?
 11 A. I think you've gotten all you're going to get out
 12 of me on that subject.
 13 Q. Are you indicating you cannot answer that
 14 question? Are you indicating none of them did?
 15 MR. DUNN: Objection. Asked and answered.
 16 A. Are you finished?
 17 Q. (BY MR. SWEETEN) I'm asking -- can you give me
 18 an answer?
 19 A. I did.
 20 Q. Okay. I'm asking you -- are you saying all 19 --
 21 let me clarify what you're saying.
 22 Are you saying all 19 of these people passed
 23 Senate Bill 14 with the purpose of discriminating
 24 against racial minorities?
 25 MR. DUNN: Objection. Asked and answered.

116

1 You can answer.
 2 A. I think you better read the record. I've said
 3 all I'm going to say about it.
 4 Q. (BY MR. SWEETEN) And I'm asking you to clarify,
 5 and I have the right to an answer to my question.
 6 A. And I've got a right to tell you I've said all
 7 I'm going to say.
 8 Q. Are you refusing to answer my question?
 9 A. I think I've been crystal clear on the subject.
 10 Q. Is it your testimony that all 19 of these
 11 Senators voted for Senate Bill 14 with the purpose of
 12 discriminating against racial minorities?
 13 MR. DUNN: Objection. Asked and answered.
 14 A. I think they knew or they should have known that
 15 this bill would have a disparate impact on people of
 16 color.
 17 Q. (BY MR. SWEETEN) So, which of those knew, in
 18 your opinion?
 19 A. I think that each one of them either knew or
 20 should have known, and that is as far as I'm going to
 21 go.
 22 Q. Okay. So, you're saying that they -- that you
 23 can't tell us of the 19 that voted for it who knew and
 24 who should have known?
 25 A. I got out of the mind reading business well

117

1 before I got elected but I do have common sense, and
 2 based on the data that was given, based on the history
 3 of Texas discriminating against people of color as it
 4 relates to voting, that precious constitutional right,
 5 anybody who voted for this bill either knew or should
 6 have known that it would have a disparate impact on
 7 people of color.
 8 Q. And you can't tell us as you're sitting here
 9 which ones knew or which ones should have known, of the
 10 yea votes for Senate Bill 14?
 11 A. Well, if I could, I wouldn't tell you.
 12 Q. So, are you refusing to answer my question?
 13 A. I think you got an answer. I think you got a
 14 good answer. We can keep going back and forth on this
 15 record.
 16 MR. SWEETEN: I'm going to object to his
 17 answers as nonresponsive on the topic.
 18 Q. (BY MR. SWEETEN) I guess I'll just ask you one
 19 time and then we can move on to something else: Are you
 20 refusing to answer that question?
 21 A. I've said all I'm going to say.
 22 Q. Would you agree that the Committee of the Whole
 23 proceeding allows the Senate to have greater
 24 deliberation regarding an issue?
 25 A. As I stated earlier, it would depend on the bill

118

1 but based on my 22-year experience, instances in which
 2 we have gone into Committee of the Whole, we've had less
 3 deliberation instead of more.
 4 I can remember on a tax bill at one point under
 5 Bob Bullock, members, in my judgment, tend to dig in
 6 less, find more distractions, not really become an
 7 expert on the subject when you go into Committee of the
 8 Whole, as would be the case, I guess, if we tried to
 9 consider a bill in the Joint Committee between the House
 10 and the Senate. Sometimes the more people you have in
 11 the room, the less you really have them focusing in on
 12 it, based on my observation.
 13 Q. What amendments did you offer to Senate Bill 14?
 14 A. I think I offered three. Probably the same -- at
 15 least three. The same three that I offered a couple
 16 of -- in the previous session. I offered one -- let's
 17 see here.
 18 Q. Now, you're looking at notes; is that right,
 19 Senator Ellis?
 20 A. Yeah.
 21 Q. Can I have -- can I look at your notes?
 22 MR. DUNN: Senator, those notes, were they
 23 prepared by attorneys on your staff?
 24 THE WITNESS: Yes.
 25 MR. DUNN: Then we'll invoke attorney/client

119

1 privilege on the notes.
 2 MR. SWEETEN: He can't reference during a
 3 deposition notes without --
 4 THE WITNESS: Okay. I submitted --
 5 MR. SWEETEN: Hold on a minute. I'm having
 6 a discussion with counsel on this.
 7 He can't reference notes and testify off
 8 them without me having a right to review them.
 9 THE WITNESS: Okay. I won't.
 10 MR. DUNN: He's only using the notes to get
 11 bills and dates. We've invoked attorney/client
 12 privilege on the notes. We'll have to take it up with
 13 the Court at this point.
 14 A. Do you want me to answer or leave it alone?
 15 Q. (BY MR. SWEETEN) You can go ahead and answer the
 16 question.
 17 A. Okay.
 18 Q. Do you want her to reread the question?
 19 A. What amendments did I offer?
 20 Q. Yes. Go ahead.
 21 A. I offered at least three. One was asking for the
 22 Secretary of State or whatever appropriate state
 23 entity -- I think it was the Secretary of State -- to do
 24 a report on whether or not the bill had a disparate
 25 impact -- I think I might have asked for a quarterly

120

1 report on what impact it would have on young people, the
 2 elderly, racial and ethnic minorities.
 3 And just off the top of my head, I can't remember
 4 what the other two were. I did at least three.
 5 Probably same day registration. I probably did
 6 something on same day registration.
 7 And I may have done something about -- I don't
 8 know -- expanding the motor voter thing -- if I didn't
 9 do it, I may have given it to somebody else -- expanding
 10 the motor voter concept to people who were getting Food
 11 Stamps and other forms of assistance.
 12 Q. I want to ask you a few questions about -- first
 13 of all, you are registered to vote, I assume, correct?
 14 A. Hope so.
 15 Q. You've already told me you have a driver's
 16 license, correct?
 17 A. Yes.
 18 Q. Do you have a license to carry?
 19 A. No.
 20 Q. Do you have a passport?
 21 A. Yes.
 22 Q. Do you have a citizenship certificate?
 23 A. I've never seen it. Last I checked, I'm a
 24 citizen. I know I was born at Texas State Hospital For
 25 Negroes but I don't -- I've never -- if I have it, I

121

1 haven't seen it.
 2 I remember seeing a big old thing once with my
 3 feet on it maybe when I was going to get a passport, and
 4 people were laughing at me, if that's what you're
 5 talking about. That may be somewhere in the closet at
 6 my mother's house. You don't have that? Big old thing,
 7 you put your feet on it.
 8 MR. DUNN: I was born in St. Joseph's.
 9 A. Back then, that's what you did at the Houston
 10 Hospital for Negroes.
 11 MR. DUNN: Oh, yeah, they did that.
 12 A. My feet were on it.
 13 MR. DUNN: Birth certificate.
 14 A. Yeah. May have been. The first time I was going
 15 to get my passport, I thought I had to have that, and
 16 people laughed at me when I walked in with this big
 17 thing.
 18 Q. (BY MR. SWEETEN) Okay. I want to ask that also
 19 about the voting age members in your household. Your
 20 wife, I assume, has a passport?
 21 A. She does.
 22 Q. The other voting age, if you could just go
 23 through their names and whether or not they have a
 24 passport.
 25 A. We're fortunate enough to be in, you know, a

122

1 comfortable household, and all my children have
 2 passports. They have all traveled out of the country.
 3 Q. So, everybody we named earlier has a passport?
 4 A. They all have a passport. We're not quite the
 5 norm for Senate District 13.
 6 Q. Can you tell me as you're sitting here any
 7 person's name that is not able to get a -- and who is
 8 eligible to vote -- who is not able to receive a free
 9 identification as provided for in Senate Bill 14?
 10 A. Well, Eligha Ellis will have a hard time if -- my
 11 father, my 91 year old father, if my sister, Melody
 12 Ellis, didn't take him to go get one. He doesn't have a
 13 driver's license. Thank God, we reported him running
 14 into people. So, they took his license where he
 15 couldn't pass the test again. He would be one.
 16 I can't think of the names but there are other
 17 people in that neighborhood that my dad lives in where
 18 my sister is his caregiver.
 19 Q. This is your father. How old is he?
 20 A. Will be 91 in August.
 21 Q. Are you indicating that your father does not have
 22 an identification that would be acceptable under Senate
 23 Bill 14?
 24 A. I'm saying that -- no, he has one because he's
 25 registered to vote. If my sister didn't take care of

123

1 it, as much as I'm gone, he would be in a bind.
 2 Q. Does he have an identification from the DPS?
 3 A. I don't know what he has but I know he's
 4 registered to vote. Don't turn him in if he doesn't
 5 have one. I don't know. I haven't seen it.
 6 Q. You're indicating that he is able -- he would be
 7 able to vote under Senate Bill 14 as currently written?
 8 A. Well, he voted -- well, I'd have to check and see
 9 if he's registered right now or not. I know he voted
 10 for Mr. Obama the last time.
 11 Q. I'm asking would Mr. Ellis, your father -- are
 12 you indicating that he would not be able to vote --
 13 A. He would be able as long as --
 14 Q. -- under Senate Bill 14?
 15 A. Under Senate Bill 14, as long as we could find
 16 somebody or I had time to go put him in that long line
 17 to get one.
 18 Q. Okay. So, he has --
 19 A. He doesn't drive.
 20 Q. He has the means to get to the --
 21 A. He has a son who is a Senator.
 22 Q. -- to get to the DPS office.
 23 Let me ask the question again.
 24 Are you aware of any specific person that under
 25 Senate Bill 14 would not have the requisite ID to vote?

124

1 A. I know of some but I don't know their names.
 2 Q. Okay.
 3 A. The ones whose names I know, either I or I get
 4 somebody, I work it out, I take the burden upon myself
 5 to work it out for them.
 6 Q. But as you're sitting here, you can't think of
 7 any person's name that couldn't get appropriate
 8 identification --
 9 A. That's correct, as I'm sitting here.
 10 Q. -- under Senate Bill 14?
 11 A. That's correct, as I'm sitting here, but I could
 12 walk outside and find you some if you had time. A
 13 couple under those bridges when I go bike riding. I
 14 don't ask their names.
 15 Q. And you're sure those are registered voters, sir?
 16 A. I'm pretty sure they're not registered to vote.
 17 Q. Again, my question is can you identify any
 18 specific person that under Senate Bill 14 would not be
 19 able to produce the requisite identification to vote?
 20 A. Couldn't think of a name unless I went out and
 21 looked for some.
 22 Q. Okay. The three amendments you talked about, can
 23 you tell us what they were?
 24 A. Thought I did.
 25 Q. Okay. We've gone on to other things, so, if you

125

1 could just tell me.

2 A. One was doing a periodic report on the impact of

3 this bill, whether it would have disparate impact on

4 people with disabilities, racial and ethnic minorities,

5 students and the elderly.

6 One on same day registration.

7 I cannot remember what the third one was. It may

8 have had something to do with trying to expand the motor

9 voter concept to people getting public assistance.

10 Q. Okay. Were your amendments -- you were able to

11 offer your amendments, correct?

12 A. I was.

13 Q. You were able to address the merits of your

14 amendments on -- during the Committee of the Whole

15 proceedings, correct?

16 A. That's correct.

17 Q. You weren't in any way precluded from voicing

18 your beliefs about why those amendments should be added,

19 correct?

20 A. I could talk all I wanted to talk. Nobody was

21 listening but I was able to talk.

22 Q. In addition to your amendments, you were able to

23 fully describe your opposition to this bill and did so

24 during the Committee of the Whole proceedings in 2011,

25 correct?

126

1 A. We -- in addition to whatever we said this go

2 round, there was agreement among the body that it is

3 what it is, and we agreed that the record from the

4 previous session would be included so that we wouldn't

5 have to drag on, arguing with one another.

6 Q. You weren't precluded from articulating your

7 views on Senate Bill 14 or your amendments on Senate

8 Bill 14 in any way?

9 A. I was not precluded. In fact, they were nice

10 enough to say, "You can take the record of everything

11 you said the last session and the one before and that's

12 included as well."

13 Q. Do the rules provide for time limits for debate

14 on amendments?

15 A. I have -- the rules may provide for it. I cannot

16 recall anyone ever invoking that in the Senate. We are

17 a very gentle person like body. So, we generally don't

18 do that.

19 Q. Okay.

20 A. Somebody can talk as long as they want to.

21 Q. And that certainly wasn't done during the debate

22 on Senate Bill 14?

23 A. As I said earlier, we met privately in the back

24 room and, you know, it was clear that they were going to

25 pass it by a majority vote, it was what it was, and we

127

1 would battle it out in court.

2 And so, on our side, we did as much as we could

3 to be respectful, even some of that language that you

4 were trying to bring back on me when I was trying to be

5 Senatorial like.

6 You know, it was pretty much understood this will

7 fought out in court and at the Justice Department, so,

8 let's hurry up and get it on over there.

9 Q. Okay.

10 A. It was a much more thorough discussion two years

11 earlier.

12 Q. No one, quote, called the question on your

13 amendments when you were offering them?

14 A. No, not on mine. I'm usually pretty quick. I

15 just cannot remember if they did that on anybody else.

16 We've got a couple of members sometimes that will get a

17 little wound up.

18 Q. Would you have supported the passage of Senate

19 Bill 14 had your three amendments been accepted?

20 A. No, I doubt it. I would have -- there was --

21 there would have been some amendments, if they were

22 taken, where I may have supported it.

23 Q. Did you also offer an amendment on IDs for

24 college students? Is that one you missed?

25 A. I don't know. I might have.

128

1 Q. You don't recall?

2 A. My office and I prepared a large number of

3 amendments from talking to people around the country,

4 and we gave them out to other members. So, I can

5 remember my office working on that. I don't remember if

6 I did it or we gave it to someone else. It certainly

7 came up.

8 Q. Would you have supported the bill had that

9 amendment -- if student IDs would have been added?

10 A. No. It would have had to have a heck of a lot

11 more than just student IDs. Unfortunately, far too few

12 of our minorities in Texas are in school.

13 Q. Do you conduct surveys or polling within your

14 district to determine how your constituents view

15 different issues?

16 A. To some limited extent.

17 Q. What sorts of issues do you poll your

18 constituents about?

19 A. Well, mainly how they feel about me but I don't

20 spend money -- I don't go out and spend money trying to

21 figure out if somebody is for a smoking ban or for

22 gambling.

23 You know, I think I have a pretty good grasp of

24 what my constituents want, and I try to spend time doing

25 the give and take with them, sometimes thinking that

129

1 they may have more expertise on the issue than I have
2 and sometimes maybe I have access to more information
3 than they have. So, we share it.

4 Q. Okay. Have you ever polled your constituents
5 about the issue of voter fraud?

6 A. No.

7 Q. Are you aware of constituent polling on the issue
8 of voter fraud?

9 A. I've read about it in the papers, and my
10 colleagues have shared their data with me.

11 Q. Would you agree that the vast majority of polls
12 that you have seen reflect that the public is in favor
13 of photo identification for voters?

14 A. I think at one point in the debate on the floor,
15 I made the comment to Senator Fraser that if anybody did
16 any polling in Texas, I bet most people in Texas favored
17 the poll tax when they passed it, and most people --
18 polling indicates they favor a lot of stuff that we
19 don't pass and they don't favor a lot of stuff that we
20 do pass. And if you could just do it electronically,
21 why are we here?

22 Q. So, my question, though, is are you aware that
23 the vast majority of polling on this issue shows --

24 A. I am.

25 Q. -- public support for it?

130

1 A. I am.

2 Q. Are you also aware that the vast majority -- that
3 the majority of polling on this issue shows that both
4 Latinos and African Americans, a majority of them
5 support a photo identification requirement?

6 A. I am aware of that.

7 Q. Are you aware of any poll whatsoever to the
8 contrary?

9 A. No, but I'm not aware of what questions have been
10 asked. Oftentimes when people do polls, it depends on
11 how you ask the question.

12 I have been told, I've not seen it, but
13 someone -- I can't remember who but someone did tell me
14 that they wanted to do a push poll that would say do you
15 favor voter ID if you are shown that a disproportionate
16 number of minorities and older people in ethnic groups
17 don't have a government issued ID.

18 I can't remember who but someone told me -- you
19 know, a push poll is not the most scientific form of
20 polling. So, the point I'm trying to make to you just
21 for the record, of course, as well is that it depends on
22 what you ask.

23 Most people are for, if you poll them, sunny days
24 until everything is dead in the neighborhood, and then
25 they can take a little rain.

131

1 Q. Okay. But my question is are you saying -- and
2 you've already answered the question that the vast
3 majority of polls you're aware of show the public is in
4 favor of it. Okay. So, are you saying then that the
5 vast majority of polls, you're quibbling with the
6 methodology in some way?

7 A. I'm saying the vast majority of polls that I am
8 knowledgeable of were done by people who wanted to get
9 the bill passed and who thought that their side would
10 benefit from the bill passing.

11 Q. Are you aware of independent polls by news
12 organizations regarding this issue?

13 A. I have seen polls by news organizations. And
14 even the news organizations, it depends on how deep down
15 you go in a poll.

16 I'm not being facetious but if you do a poll do
17 most people favor a sunny day or a rainy day, most
18 people favor a sunny day unless they are living in a
19 drought stricken area. So, it all depends on what you
20 ask but I'm not the one who governs who votes based on
21 polling data.

22 Q. Well, would you agree that Representatives of the
23 Texas Senate have a duty to represent their constituents
24 and their constituents' wishes?

25 A. Yeah, when they know what their constituents'

132

1 actual wishes are. What I'm saying to you is that if we
2 had government by polling, you know, it depends on what
3 you ask, you could have a whole lot of strange things
4 going on. I mean, the process -- a lot of it depends on
5 the question.

6 Q. Okay. So, just so I'm clear, you're saying you
7 realize the vast majority of polls show that the public
8 is in favor of photo identification requirements, there
9 also seems to be some suggestion by you that you
10 question the methodology of some of the polls. Is that
11 all accurate so far?

12 A. That is. And in addition to it would be I'm
13 saying most people are against cutting funding for
14 schools and most people, if you poll them, are against
15 paying more taxes for schools. So, I'm saying that when
16 you ask the question do I think most members of the
17 Senate have a duty to reflect the interest of their
18 constituents, we would have total chaos if we just voted
19 on the basis of a poll because polls rarely reflect what
20 our constituents think because polls rarely give them
21 all of the options.

22 And I eluded to that when I made reference to
23 most people in Texas favored the poll tax. Most people
24 in Texas, when women couldn't vote, thought it was okay
25 for women not to vote. If you polled in Texas when you

133

1 had to have property to vote, most people figured, yeah
2 the people who have property --

3 Q. Isn't that supposition on that part as to those
4 three issues, you don't know what polling occurred
5 during those time periods?

6 A. I read a little bit about it. It wasn't very
7 scientific but in terms of what the public sentiment was
8 during the poll tax era.

9 Q. Are you aware of one poll that you can cite for
10 us today that indicates that the public is not in favor
11 of photo identification requirements for voting?

12 A. No, and I'm not aware of any specific poll that I
13 can cite for you today where they are in favor of it.
14 If you want me to go do a little research --

15 Q. Then let's clear this up because you already said
16 that the vast majority of polls that you've read or that
17 you've seen show that people are in favor of photo
18 identification requirements. Are you amending that
19 statement now?

20 A. No. I'm just saying when you ask me can I point
21 to one specific poll that indicates the opposite of
22 that, no, I cannot point to a specific poll but based on
23 my recollection, most of the polls I have seen indicate
24 that there is public support for it, and I'm saying to
25 you that they indicate public support based on what was

134

1 asked in the poll.

2 If someone were asked, "Are you for it if you
3 know it will have a disparate impact or it might have a
4 disparate impact on minorities, on the elderly, on the
5 disabled, on people of an ethnic minority, are you still
6 for it," and people don't -- I've seen no polls that go
7 in and put that in it.

8 Q. Are you indicating that you don't think that
9 those who answer questions about photo identification
10 requirements know or have analyzed potential issues with
11 respect to it like the ones you mentioned?

12 A. I'm saying that most of the polls that I know
13 about have been fairly cursory. I doubt that they have
14 said to people, "If you think there's a possibility that
15 a voter ID bill would have a disparate impact on people
16 of color" -- I don't think the people of color who favor
17 voter ID would say, "Oh, that's fine."

18 If you put in the poll, "I think it might have a
19 disparate impact on the elderly," I don't think the
20 elderly who were saying they are for it would say
21 they're for it.

22 Q. What's so difficult about getting a free
23 identification as allowed for by Senate Bill 14? Why is
24 that so hard, in your view?

25 A. Okay. First of all, in Texas, the lines are

135

1 pretty long to get it. If you want a driver's license,
2 which is what most people think about -- I'm trying to
3 discard credit cards right now because I would like to
4 sit down and not feel this bulge or think about the debt
5 that I owe. I want to get rid of some cards.

6 So, most people -- the card that most people want
7 to have would be a driver's license because that's the
8 one that you think you might need for some other reason
9 like driving.

10 When I hear the analogy, well, you've got to have
11 ID to fly, well, you don't. You've just got to go
12 through a lot of hassle. I lost my ID not too long ago,
13 and they did let me get on the plane. I don't think it
14 was who I was. I just had to go through a lot of
15 changes to get on it but that's not a constitutional
16 right. So, I'm saying yes, it's difficult.

17 Q. Travel is not a constitutional right?

18 A. No. You better have some money.

19 Q. Okay.

20 A. You've got to have some money to go do it. If
21 you've got no money complex, it's not a constitutional
22 right.

23 Q. Let me ask you this then: What's so difficult
24 about going to the DPS -- what are the steps that would
25 be involved in getting a free identification under

136

1 Senate Bill 14? Just tell us what those would be.

2 A. Well, I hope we have it accessible now but I got
3 a call from -- we politicians get to go to the VIP room
4 to get our driver's license.

5 Q. That's not what I was asking you, though. I'm
6 asking you what is so difficult about a constituent that
7 you have going to get a free identification as provided
8 by Senate Bill 14, if you can answer that question?

9 A. First of all, you've got to figure out where it
10 is. It's probably not inside the Loop. If you go to
11 what I call DPS, what used to be Motor Vehicle, the last
12 discussion I had with somebody about it about a month
13 ago, it was a very important person trying to avoid the
14 lines. So, there are lines you've got to go through to
15 get there. You know, it's a real hassle.

16 And if you don't have a car -- I guess if you
17 don't have a driver's license, you've got to worry about
18 driving. If you don't have a car, you've got to figure
19 out how you get there. If you're in a city like
20 Houston, it's hell getting a bus anywhere.

21 I guess if you ride bikes like I do, you figure
22 you ride a bike. You're obese anyway but it's a hassle
23 to do.

24 And I'd be interested to look at how many people
25 have this government issued ID other than a driver's

<p style="text-align: center;">137</p> <p>1 license.</p> <p>2 Q. When you go vote --</p> <p>3 A. Let me finish.</p> <p>4 Q. Go ahead.</p> <p>5 A. Then the hassle with getting a driver's license</p> <p>6 would be if you got a ticket -- I haven't looked at my</p> <p>7 stats in Harris County for a while -- I remember asking</p> <p>8 for the stats on Harris County when I saw this news</p> <p>9 report about El Paso County some time ago but there are</p> <p>10 a number of people who have financial difficulties,</p> <p>11 particularly now. So, you owe for a ticket and, then</p> <p>12 you're out. You're out of luck. And then you've got to</p> <p>13 have the insurance. I mean, it's a requirement if</p> <p>14 you're going -- if you're going to drive a car, you've</p> <p>15 got to have -- I can't remember if we passed the thing</p> <p>16 or not. Somebody was trying to get a thing passed where</p> <p>17 you can't get a driver's license if you don't have proof</p> <p>18 of insurance.</p> <p>19 Q. Senator Ellis, I want to make sure we're on the</p> <p>20 same page. You understand that Senate Bill 14 provides</p> <p>21 for a free identification?</p> <p>22 A. Uh-huh.</p> <p>23 Q. You're not indicating that it requires you to</p> <p>24 show proof of insurance?</p> <p>25 A. No, I'm not.</p>	<p style="text-align: center;">139</p> <p>1 said standing in some sort of line?</p> <p>2 A. I'm assuming that there are lines -- I know</p> <p>3 people have complained to me about lines to go and get a</p> <p>4 driver's license. And I'm assuming if you're going to</p> <p>5 something that is perceived as a law enforcement entity,</p> <p>6 there are people in my district who don't have a healthy</p> <p>7 regard for people who are in uniforms, and they usually</p> <p>8 don't go out of their way to go to a Department of</p> <p>9 Public Safety office or some law enforcement type office</p> <p>10 to go get an ID, not that they're doing anything wrong</p> <p>11 but I don't think they -- it's just not the kind of</p> <p>12 place that they look forward to going to visit.</p> <p>13 Q. Anything else I missed that would present</p> <p>14 difficulty for getting a free identification?</p> <p>15 A. I'll keep thinking about it.</p> <p>16 Q. Okay. Keep thinking about it.</p> <p>17 A. We may think of some others.</p> <p>18 Q. Let's do.</p> <p>19 A. Let me go get a glass of water. I might think of</p> <p>20 some more.</p> <p>21 Q. Okay.</p> <p>22 A. I won't ask anybody while I'm gone.</p> <p>23 (Off the record.)</p> <p>24 (Whereupon at 5:11 p.m. the</p> <p>25 deposition was adjourned.)</p>
<p style="text-align: center;">138</p> <p>1 Q. So, let's stay with the question.</p> <p>2 A. You've got to find.</p> <p>3 Q. So, the hard part is finding the DPS office?</p> <p>4 A. Finding it, knowing about it.</p> <p>5 Q. How are those two separate things, finding it and</p> <p>6 knowing about it?</p> <p>7 A. First of all, if somebody has not had to have</p> <p>8 this in order to go vote, I doubt that they are going to</p> <p>9 think about it until they get in there to vote, and then</p> <p>10 somebody is going to say, "Where is your ID?"</p> <p>11 So, you really -- I mean, I know -- when you</p> <p>12 think about the low number of people who vote in Texas</p> <p>13 anyway, it's not as though people are jumping off the</p> <p>14 roof to go vote, and when you're trying to get people</p> <p>15 who have been disenfranchised to participate in the</p> <p>16 process, another hurdle, another barrier to go through,</p> <p>17 it presents a problem.</p> <p>18 Q. So, the difficulty -- let's stay with the</p> <p>19 difficulty of getting a free identification under Senate</p> <p>20 Bill 14. One, you have to find out where the DPS office</p> <p>21 is. What's number two?</p> <p>22 A. You've got to figure out a way to get there to go</p> <p>23 get it.</p> <p>24 Q. You've got to get to DPS. Okay. And then -- and</p> <p>25 can you give me any other difficulties? I think you</p>	<p style="text-align: center;">140</p> <p>1 ERRATA SHEET</p> <p>2</p> <p>3 Correction Page Line</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: center;">143</p> <p>349755 eb</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS, * Plaintiff, * VS. * ERIC H. HOLDER, JR., in his * official capacity as Attorney * General of the United States, * Defendant, * ERIC KENNIE, et al, * Defendant-Intervenors, * TEXAS STATE CONFERENCE OF NAACP * CASE NO. BRANCHES, et al, * 1:12-CV-00128 Defendant-Intervenors, * (RMC-DST-RLW) TEXAS LEAGUE OF YOUNG VOTERS * THREE-JUDGE COURT EDUCATION FUND, et al, * Defendant-Intervenors, * TEXAS LEGISLATIVE BLACK CAUCUS, * et al, * Defendant-Intervenors, * VICTORIA RODRIGUEZ, et al * Defendant-Intervenors. *</p> <p style="text-align: center;">TELEPHONIC DEPOSITION OF SENATOR RODNEY ELLIS VOLUME 2 UPON RECEIPT OF SIGNATURE, THE ORIGINAL OF THIS DEPOSITION WILL BE IN THE CUSTODY OF:</p> <p style="text-align: center;">Patrick K. Sweeten, Esquire Office of the Attorney General of Texas P.O. Box 12548 (78711-2548) 209 West 8th Street, 8th Floor Austin, Texas 78701</p> <p>Date Edith A. Boggs, CSR</p> <p>6-23-12 HOUSTON, TEXAS</p>	<p style="text-align: center;">145</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>ATTORNEY FOR PLAINTIFF, STATE OF TEXAS:</p> <p>Office of the Attorney General of Texas P.O. Box 12548 (78711-2548) 209 West 8th Street, 8th Floor Austin, Texas 78701 By: Patrick K. Sweeten, Esquire (512) 936-1307 patrick.sweeten@oag.state.tx.us</p> <p>ATTORNEY FOR DEFENDANT, HOLDER, ET AL:</p> <p>U.S. Department of Justice 950 Pennsylvania Avenue, NW NWB - Room 7202 Washington, DC 20530</p> <p>By: Jennifer Lynn Maranzano, Esquire (Present telephonically) (202) 305-7766 jennifer.maranzano@usdoj.gov</p>
<p style="text-align: center;">144</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 DEPOSITION OF SENATOR RODNEY ELLIS</p> <p>9</p> <p>10</p> <p>11 DEPOSITION AND ANSWERS of SENATOR RODNEY ELLIS, taken</p> <p>12 before Edith A. Boggs, a certified shorthand reporter in</p> <p>13 Harris County for the State of Texas, taken at the</p> <p>14 offices of State Senator Rodney Ellis, 440 Louisiana,</p> <p>15 Suite 575, Houston, Texas, on the 23rd day of June,</p> <p>16 2012, between the hours of 8:08 a.m. and 10:38 a.m.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">146</p> <p>1</p> <p>2 A P P E A R A N C E S (Continued)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>ATTORNEY FOR THE KENNIE INTERVENORS:</p> <p>Brazil & Dunn, LLP 4201 Cypress Creek Parkway, Suite 530 Houston, Texas 77068</p> <p>By: Chad Dunn, Esquire (281) 580-6310 chad@brazilanddunn.com</p> <p>ALSO PRESENT: Mr. Brandon Dudley</p> <p>REPORTED BY: Ms. Edith A. Boggs</p>

<p style="text-align: center;">147</p> <p>1 EXAMINATION INDEX</p> <p>2</p> <p>3 QUESTIONS BY PAGE</p> <p>4 Mr. Sweeten 148</p> <p>5</p> <p>6 INDEX OF EXHIBITS</p> <p>7</p> <p>8 NO. MARKED DESCRIPTION</p> <p>9 None</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">149</p> <p>1 it --</p> <p>2 A. That's correct.</p> <p>3 Q. -- despite that designation, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. In fact, what are the effects of the Governor</p> <p>6 declaring an emergency legislation?</p> <p>7 A. During the first early period of the session, you</p> <p>8 could need a four-fifths vote to bring a bill up. So,</p> <p>9 that would mean you could bring the bill up out of order</p> <p>10 by tradition with a two-thirds vote.</p> <p>11 Q. Okay. And I want to ask you -- and certainly</p> <p>12 that's -- there were other matters that the Governor --</p> <p>13 A. It's up to a Governor.</p> <p>14 Q. I'm sorry?</p> <p>15 A. It's up to a Governor.</p> <p>16 Q. Right. And there were other matters that session</p> <p>17 that the Governor deemed to be emergency legislation,</p> <p>18 correct, during the 82nd?</p> <p>19 A. I assume. I don't recall.</p> <p>20 Q. You then say in paragraph 9 that you offered</p> <p>21 several amendments, including one that would have</p> <p>22 required the Secretary of State to produce an annual</p> <p>23 report analyzing, among other things, whether the</p> <p>24 requirements imposed by Senate Bill 14 had a</p> <p>25 disproportionate impact on racial and ethnic minorities.</p>
<p style="text-align: center;">148</p> <p>1 SENATOR RODNEY ELLIS</p> <p>2 was called as a witness and, being previously duly sworn</p> <p>3 by the notary, testified as follows:</p> <p>4 EXAMINATION</p> <p>5 Q. (BY MR. SWEETEN) Senator, you understand this is</p> <p>6 a continuation of your deposition from yesterday, and</p> <p>7 you understand you're still under oath for this</p> <p>8 proceeding, sir?</p> <p>9 A. I do.</p> <p>10 Q. I'm going to move back to Ellis Exhibit 1, which</p> <p>11 is your declaration, sir. I'll put that back in front</p> <p>12 of you. We left off yesterday, I think, on Page 1. So,</p> <p>13 there are a few remaining questions regarding your</p> <p>14 affidavit that I still have.</p> <p>15 MR. DUNN: Did you mean to say Page 2?</p> <p>16 MR. SWEETEN: Yes.</p> <p>17 Q. (BY MR. SWEETEN) Page 2. On 8, you discuss</p> <p>18 Governor Perry designated Senate Bill 14 as emergency</p> <p>19 legislation. Certainly it is within the Governor's</p> <p>20 power to designate legislation as emergency legislation,</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. If legislation is declared emergency legislation,</p> <p>24 it's still up to the Senators to determine what they</p> <p>25 want to do with that legislation. They fully consider</p>	<p style="text-align: center;">150</p> <p>1 So, you attempted to amend the bill to add that for</p> <p>2 annual reporting to occur after the implementation of</p> <p>3 Senate Bill 14, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And was the amendment that you offered -- by the</p> <p>6 way, that amendment you offered was not accepted,</p> <p>7 correct?</p> <p>8 A. It did fail.</p> <p>9 Q. And had it been added to Senate Bill 14, it would</p> <p>10 have been perspective, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. It would not in any way have affected the</p> <p>13 implementation of the provisions of Senate Bill 14,</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. Let's go to Page 3, paragraph 10. You</p> <p>17 talk here about an amendment to provide for same day</p> <p>18 voter registration, an amendment to allow a voter to use</p> <p>19 his or her unexpired student photo identification from</p> <p>20 an accredited public Texas university. With respect to</p> <p>21 student IDs, are you aware if student IDs reflect</p> <p>22 whether or not a student -- actually, strike that.</p> <p>23 Is a student at a public university in the State</p> <p>24 of Texas necessarily a citizen?</p> <p>25 A. A student at a public university does not</p>

<p style="text-align: center;">151</p> <p>1 necessarily have to be a citizen, nor does a student at</p> <p>2 a private university have to be a citizen.</p> <p>3 Q. So, a student could be issued a student ID and</p> <p>4 they could be, for example, a resident of Vermont or a</p> <p>5 nonresident alien, correct?</p> <p>6 A. I usually don't refer to humans as aliens but I</p> <p>7 get your drift. I do know that a student at a</p> <p>8 university could have an ID and could be a citizen of</p> <p>9 another state.</p> <p>10 I also know that the Supreme Court has ruled that</p> <p>11 a student's residence is either where they live -- where</p> <p>12 their parents live or where they go to school.</p> <p>13 Q. So, a nonUS citizen could be a student at the</p> <p>14 University of Texas, for example?</p> <p>15 A. I suspect that there are some.</p> <p>16 Q. And they could be issued a photo ID?</p> <p>17 A. That's correct.</p> <p>18 Q. Let's go to paragraph 11. Here you talk about,</p> <p>19 "During consideration of Senate Bill 14, Senator Fraser</p> <p>20 did not acknowledge the extent of the difficulty that</p> <p>21 some voters might encounter in traveling to a driver's</p> <p>22 license office to obtain one of the required forms of</p> <p>23 photo identification."</p> <p>24 Here you say, "For example, in my district, there</p> <p>25 are driver's license offices within the 610 Loop, which</p>	<p style="text-align: center;">153</p> <p>1 in a discussion with minority legislators about these</p> <p>2 concerns."</p> <p>3 Let me ask you are you aware as you're sitting</p> <p>4 here of any specific research about the effect of Senate</p> <p>5 Bill 14 on minorities that was not provided to you, in</p> <p>6 other words, anything that was in existence and not</p> <p>7 provided to you during the discussions on Senate Bill</p> <p>8 14?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Can you tell me what that is?</p> <p>11 A. You know, there are numerous reports after this</p> <p>12 debate was over with that people would send in to me or</p> <p>13 talk about.</p> <p>14 I made comment yesterday about me calling</p> <p>15 legislators, some from the floor in Indiana, and that</p> <p>16 was this -- there was limited discussion on the floor</p> <p>17 about the Baker/Carter or Carter/Baker report. Bush</p> <p>18 just had some footnote about the concern that there</p> <p>19 could be a disproportionate impact on minority voters.</p> <p>20 There was some Brennan Center report. I'm aware of a</p> <p>21 number of scholarly journals who have done reports on</p> <p>22 both sides of the issue.</p> <p>23 Q. Okay.</p> <p>24 A. But that didn't come up during this.</p> <p>25 Q. Let me back up on that.</p>
<p style="text-align: center;">152</p> <p>1 is the inner city portion of Houston." Did I read that</p> <p>2 correctly?</p> <p>3 A. You did.</p> <p>4 Q. Are you aware of the concept of a DPS</p> <p>5 supercenter, sir?</p> <p>6 A. I am.</p> <p>7 Q. Are you aware if such a center is slated to be</p> <p>8 built or being built in Houston?</p> <p>9 A. I don't know if one is slated to be built but</p> <p>10 when I made this statement, I knew that there was not</p> <p>11 one in my district.</p> <p>12 Q. Okay. But as far as whether or not --</p> <p>13 perspective plans, you don't know one way or the other?</p> <p>14 A. As broke as the State of Texas is, even if</p> <p>15 someone suggested it, I wouldn't believe them.</p> <p>16 Q. You indicate in paragraph 12 -- and I won't read</p> <p>17 the entire thing but let's look at the last sentence --</p> <p>18 first, go ahead and read that to yourself, if you would.</p> <p>19 A. Okay.</p> <p>20 Q. All right. At the end you say -- the first</p> <p>21 sentence, you refer to Senators who voiced concerns that</p> <p>22 SB14 would disproportionately impact minority voters.</p> <p>23 You say that, "The proponents of the bill turned</p> <p>24 a deaf ear. They refused to present to us any research</p> <p>25 about the effect of the bill on minorities or to engage</p>	<p style="text-align: center;">154</p> <p>1 You're aware of scholarly journals, your</p> <p>2 testimony is, that either show -- some show and some do</p> <p>3 not know a disparate impact, is that what your testimony</p> <p>4 is?</p> <p>5 A. That's correct.</p> <p>6 Q. And are you indicating that those studies are in</p> <p>7 the public domain?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And are you indicating -- my question is</p> <p>10 are you aware of any specific studies that were known to</p> <p>11 proponents of Senate Bill 14, any research on the</p> <p>12 disproportionate impact of Senate Bill 14 that were</p> <p>13 not -- or that were withheld in any way?</p> <p>14 A. I don't think the proponents did any research on</p> <p>15 any disproportionate impact. They were not discussing</p> <p>16 whether or not there was any disproportionate impact in</p> <p>17 specific terms. It was just blanket comments, "I don't</p> <p>18 think it will have an impact."</p> <p>19 Q. And just to drill down a little more on that, I</p> <p>20 think what I'm hearing you say is there are studies for</p> <p>21 or against, that support or do not support your position</p> <p>22 that are in the public domain, correct?</p> <p>23 A. There are studies that support and disagree with</p> <p>24 my position and their position.</p> <p>25 Q. Okay. Those are in the public domain?</p>

155

1 A. That's correct.

2 Q. There are no studies of which you're aware that
3 were, quote, suppressed in the floor debate of Senate
4 Bill 14 that you're aware of?

5 A. To my knowledge, there were no studies based on
6 what impact it would have in Texas.

7 Q. In fact, that's one of or criticisms that you've
8 leveled is that there were no studies on the impact that
9 the bill would have on racial minorities in Texas,
10 that's what you said yesterday was your criticism?

11 A. They didn't give me any.

12 Q. Okay.

13 A. So, my criticism was they were trying to pass a
14 bill that I felt would have a disproportionate impact
15 and, to the best of my ability, I made my case that it
16 would have a disproportionate impact and, in my
17 judgment, the burden was on them to dispute that because
18 they were advancing the bill that, in my judgment,
19 creates a hindrance, an obstacle to people of color
20 being able to exercise their right to vote.

21 Q. Let's go back.

22 You indicated that there were studies for or
23 against in the public domain. You certainly had the
24 full opportunity, would you agree, to voice or produce
25 or append to the record any of those studies that you

157

1 So, it's the sort of like going up against

2 Hercules, with my limited pool of resources, small
3 staff. I can't imagine what if I could have done if I
4 had folk like you in the AG's office to help make my
5 case.

6 Q. Okay. You indicate in your declaration that,
7 "During the Senate floor debate on Senate Bill 14,
8 Senator Fraser repeated answered questions about his own
9 bill by saying that he was not 'advised' or that the
10 Secretary of State could answer the question. In
11 addition, Senator Fraser responded to questions about
12 the possible impact of this bill on minorities by citing
13 a public opinion poll indicating popular support for
14 voter photo identification requirements." Did I read
15 that correctly?

16 A. Yes. That's number 13.

17 Q. Okay. That's paragraph 13, right?

18 A. That's correct.

19 Q. Now, Senator Fraser -- let's talk about the
20 second part first because there you reference public
21 opinion poll. You're indicating that Senator Fraser
22 cited to a public opinion poll in favor of photo
23 identification requirements, correct?

24 A. Correct.

25 Q. Were you in any way precluded from offering any

156

1 chose to do?

2 A. No, I wouldn't say that I had enough time to do
3 it because I didn't have the resources, nor the full
4 arsenal of the State of Texas. I didn't have the
5 distinguished Attorney General's Office advising me
6 along the way and pulling together everything that I
7 ought to say to put in the record or to try to keep out
8 of the record.

9 Clearly, the people who were in charge and who
10 considered this a priority and had worked on it for
11 three previous sessions, with the arsenal of the
12 national voter suppression experts and all the other
13 people coming to bear and the full arsenal of the
14 resources of the State of Texas at their disposal, I
15 think that they did have an advantage in the policy
16 making process to make their case.

17 Q. In no way were you precluded on the Senate floor
18 or during the Committee of the Whole proceedings from
19 offering any sort of research that you felt supported
20 your case other than the time that it would take to find
21 or assemble that research; is that correct?

22 A. Other than in terms of resources, staff, in the
23 arsenal of state government, second largest state in the
24 country, behind me to make my case, I was not inhibited
25 from being able to make it.

158

1 sort of poll results in the event they existed?

2 A. No, I was not precluded.

3 Q. Okay. Did you have any poll results that you
4 offered on the floor?

5 A. No. I was not aware of any poll results that
6 argued my side. My sense of poll results is that, as I
7 said yesterday, it depends on how you ask the question.
8 And you have to have the resources to go and ask the
9 question in a way to make your case.

10 And as an example, if someone had asked the
11 question of voters in my district, "Would you be for a
12 voter identification requirement if it only applied to
13 people showing up to vote, not mail-in ballots, where a
14 good part of the fraud that people have said they can
15 prove exists, would you be for it," or if it said, "Are
16 you for it if you know that a disproportionate number of
17 people of color, African American and Hispanics,
18 probably don't have the government ID," or if you said,
19 "Well, they're going to lose" -- a large percentage of
20 those people don't have driver's licenses, and to get
21 the state ID, they've got to go to the same place where
22 they owe money. They've got to show up to somebody in a
23 uniform and say, "Can I get this state ID?"

24 You know, there's a lot of things you could have
25 put in there, like the office hours, not one in the

159

1 inner city, they are not open on weekends. I think the
2 polling data would have been different. It would have
3 argued for my side, but I didn't have any of that
4 polling data.

5 Q. And you didn't commission a poll to be conducted?

6 A. No one gave me any money. The State of Texas
7 didn't give me any resources to do that polling data,
8 and none of the right wing think tanks that want to
9 suppress minorities votes offered to do that for me.

10 Q. What about any of the opposite political spectrum
11 think tanks, did you have that? Any polling of your
12 district from any --

13 A. To my knowledge, none of the financially deprived
14 civil rights organizations in the country knew of any
15 polling data in that regard.

16 Q. Okay. And certainly no polling data for your
17 position was offered in the Committee of the Whole
18 proceeding?

19 A. Didn't have any and, to my knowledge, none was
20 offered.

21 Q. Okay. So, let's go back to the first part of the
22 sentence, which is you indicated that, "Senator Fraser
23 repeatedly answered questions about his own bill by
24 stating he was not 'advised.'" Now, you're not
25 indicating that him saying "not advised" on the Senate

161

1 about a major bill that could impact civil rights
2 issues, knowing how important that is to members on both
3 sides, and they said they were not advised, that would
4 indicate to me that they didn't have a lot of confidence
5 in their position, which is why they would defer that to
6 someone else.

7 Just in a body of 31 and the egos that we have,
8 if you're advancing something, the burden is generally
9 on that person to be the expert on it, to make their
10 case, not to deflect that to someone else.

11 When you do that, that is an indication that
12 either you know something and don't want to say it, you
13 don't feel confident in your position or you really
14 don't like what you're doing.

15 Q. You would agree, wouldn't you, that that is
16 purely your subjective interpretation of the use of the
17 term "not advised," that is Senator Rodney Ellis'
18 opinion?

19 A. That is the opinion of this Senator based on
20 22 years of passing and killing legislation.

21 Q. Okay. And the -- needless to say that what he
22 said on the floor is all a matter of public record,
23 correct?

24 A. It is.

25 Q. And certainly the Court will have the opportunity

160

1 floor was evidence of purposeful discrimination, are
2 you?

3 A. I'm convinced that my colleague and desk mate,
4 Senator Fraser, who was carrying a bill that, in my
5 judgment, he didn't really want to carry but it was his
6 turn to do it, was doing what he needed to do to get
7 through the process.

8 Q. Okay. My question, though, is this: You're not
9 suggesting that by him making the statement on the
10 Senate floor, "I'm not advised," to some questions, that
11 that in and of itself shows evidence of purposeful
12 discrimination?

13 A. I think it could.

14 Q. And in what way would saying "not advised" -- how
15 would that possibly show purposeful discrimination, sir?

16 A. In my judgment, Senator Fraser, who is a bright
17 man and, as I said, a dear friend and somebody I talk to
18 more than anybody on the floor --

19 Q. Let me just go ahead and caution you before you
20 get into this, remember, I don't want any personal
21 conversations disclosed with Senator Fraser that would
22 be subject to the legislative privilege. I'll go ahead
23 and give you that caution.

24 A. If any member on the Senate floor were asked that
25 question, the questions that this Senator was asked

162

1 to review the public record and make their own
2 interpretation of that issue. And would you agree that
3 what you're referencing here was all a -- was all what
4 was on the public record, sir, the "not advised"
5 comments?

6 A. Because you restricted me to what is on the
7 record. To answer your question, it is. Obviously, I
8 know things that were not on the record.

9 Q. Okay. Well, then in this sentence of the
10 affidavit, you reference statements made on the floor.
11 So, clearly, what you're referencing here, the "not
12 advised" statement is your interpretation based upon
13 what was said on the Senate floor, correct?

14 A. My quote was, "During the Senate floor debate on
15 Senate Bill 14, Senator Fraser repeatedly answered
16 questions about his own bill by stating that he was not
17 'advised' or that the Secretary of State could answer
18 the question."

19 Now, you could read that as me just making
20 reference to what was said on the floor in public record
21 but when we are debating bills, we debate both on the
22 record and we have side bar comments as well all the
23 time, on the floor, off the floor.

24 Q. Your affidavit said, "During the Senate floor
25 debate on Senate Bill 14." Are you indicating that

163

1 you're referencing the public record or something that
 2 is outside of the public record in that statement,
 3 paragraph 13?
 4 A. I'm referencing both. When members are on the
 5 floor debating, everybody doesn't sit there like they
 6 are a zombie. We also have side conversations, which
 7 sometimes are more meaningful. Members probably collect
 8 more votes by what is not on the public record than what
 9 is not on the public record. Sometimes you have to go
 10 ask a member, "Will you vote for it?"
 11 Q. Nevertheless, your opinion that you've expressed
 12 that the use of the term "not advised" shows evidence of
 13 purposeful discrimination is your -- as you've
 14 testified, whether on or off the public floor, is your
 15 subjective opinion based on 22 years as a Senator,
 16 correct?
 17 A. Everything that I say or you say is based on a
 18 subjective opinion.
 19 Q. It's your impression of the what the term "not
 20 advised" means in the context of these discussions,
 21 these public discussions on the floor is what you're
 22 basing your opinion on, correct?
 23 A. I'm basing it on both, as I said earlier. I
 24 mean, a policy maker doesn't just go into a deep freeze
 25 and make a decision or a comment based on what is said

164

1 in the record. You do that in the courtroom, I
 2 understand that, but when we are making a decision, not
 3 just me but my colleagues as well, you know, you take in
 4 the entire spectrum of what's said, in the hall, in
 5 committee, in a private meeting, on the phone, in
 6 debate.
 7 Q. But what you've said in this affidavit is the
 8 term "not advised," and you would agree that that is a
 9 term that was used -- that that is something that
 10 Senator Fraser said on the public record in the debate?
 11 A. He did say that in the public record.
 12 Q. And your interpretations of that statement made
 13 in the public record are that that shows purposeful
 14 discrimination on behalf of Senator Fraser?
 15 A. It could.
 16 Q. Again, that's your opinion?
 17 A. That's my opinion.
 18 Q. All right.
 19 A. Everything I say, might I add, is my opinion.
 20 Q. Okay. You indicate that you found Senator
 21 Fraser's responses to be unsatisfying and not responsive
 22 to concerns about the impact of Senate Bill 14 on
 23 minority voting rights.
 24 Have we talked about -- I mean, I think that's --
 25 have we talked about the issue of -- you're saying -- is

165

1 there any other factor, any other statement that Senator
 2 Fraser made in the public debate that, in your opinion,
 3 would show that he was not responsive to concerns about
 4 the impact of Senate Bill 14 on minority voting rights
 5 other than his use of the term "not advised"?
 6 A. Yeah.
 7 Q. Okay. What else in the public record would you
 8 refer to?
 9 A. Not having -- not being able to quantify or give
 10 any data on the impact it would have on minority voting
 11 is an indication of it being -- so, not just the
 12 comment, "I'm not advised," but when asked, "What can
 13 you give us to show that it won't have a disparate
 14 impact on minority voting," and when he didn't give
 15 anything, to me, that's an indication of being
 16 nonresponsive, not just a comment but not giving
 17 anything, not making your case that it won't have a
 18 disparate impact.
 19 Q. But you, yourself didn't offer any sort of data
 20 either with respect to that question?
 21 A. I was not carrying the bill. What I did was
 22 raise the issue what about not having a place to get a
 23 license in my district, what about -- whether I did it
 24 or other members did it -- what about press accounts
 25 that in certain counties such a high percentage of

166

1 people don't have driver's license.
 2 I seem to recall somebody in the debate saying,
 3 "You want people to get their -- you want them to go get
 4 their state ID that nobody is giving right now and you
 5 want them to get it from the folks they owe money to,
 6 somebody standing there in a uniform and you want
 7 somebody who's license has been suspended to go get this
 8 state ID? Please." That discussion was held, and it's
 9 on the record.
 10 Q. My question was you didn't yourself offer data or
 11 studies opposing Senator Fraser's view during the
 12 Committee of the Whole debate yourself, correct?
 13 A. I didn't have any data that the State would give
 14 me to show the disparate impact.
 15 Q. And in any event, you did not introduce any such
 16 evidence?
 17 A. I couldn't introduce what I didn't have.
 18 Q. Okay. You voted -- on paragraph 15 you say, "I
 19 voted against Senate Bill 14 and remain opposed to this
 20 legislation in large part because of the effect that I
 21 believe it will have on minority voters." Did I read
 22 that correctly?
 23 A. You did.
 24 Q. Now, you said "in large part." Is it a fair
 25 characterization of your opinion -- and you've testified

167

1 now for several hours regarding the issue of the
2 purposeful -- what you claim is the purposeful
3 discriminatory element of Senate Bill 14. Is it a fair
4 characterization of Senator Rodney Ellis' opinion as to
5 why you believe that this Senate Bill 14 purposefully
6 discriminates against minorities, that it is the lack of
7 information on effect is what leads you to that
8 conclusion?
9 A. Partially.
10 Q. Okay. What other factors lead you to the
11 conclusion that Senate Bill 14 purposefully
12 discriminated against racial minorities?
13 A. The fact that they would not accept amendments on
14 issues like do the research to see what impact it will
15 have. The fact that they did not include absentee
16 voting, where somebody can mark a ballot for someone
17 when they mail a ballot to them. The fact that it --
18 that there was a total insensitivity on the part of the
19 proponents of the bill to show data that would indicate
20 that it would not disproportionately impact people of
21 color and the fact that when I made calls to Legislators
22 from the floor in other states during the debate to ask,
23 you know, "In your state, could they give you any
24 empirical data to show that it wouldn't hurt minority
25 voters," and I was told by the Legislators I spoke to,

168

1 "Looks like this is a trend going around the country,
2 and they come in with the same argument and very limited
3 information or data to back up what they want to do."
4 MR. DUNN: Just to make sure our record was
5 clear, you did not want him to mention any private
6 conversations with Legislators as part of that answer?
7 Q. (BY MR. SWEETEN) And, again, my goal here is to
8 find out why you think that the bill purposefully
9 discriminated. You've now listed the reasons that you
10 believe that. So, I want to make it clear that if
11 you're indicating that there are additional issues that
12 are subject to the legislative privilege, i.e., private
13 conversations with individuals, that you reference the
14 existence of those conversations but you not reveal the
15 substance of those.
16 So, you haven't listed that as one of your
17 factors. If that is a factor, just so my instruction is
18 clear, that is something I want you to reference without
19 revealing the specific substance.
20 Were there specific conversations that you had
21 off the floor that support your opinion that Senate Bill
22 14 was purposefully discriminating against racial
23 minorities?
24 MR. DUNN: When you say off the floor, do
25 you mean outside of the public record?

169

1 MR. SWEETEN: Yes, outside of the public
2 record.
3 MR. DUNN: They could have happened on the
4 floor and just not been in the public record.
5 MR. SWEETEN: Yes.
6 A. Yes.
7 Q. (BY MR. SWEETEN) And without revealing the
8 specific substance of those conversations, I want you to
9 reference who those conversations were with.
10 A. Colleagues.
11 Q. Who specifically?
12 A. I would -- some with Senator Fraser.
13 Q. Did you say let's start or --
14 A. Senator Fraser, conversations I had with him.
15 Q. And I don't want you to reveal the substance, as
16 we've talked about.
17 Are there any other specific discussions that
18 lead you to believe that this bill purposefully
19 discriminated, other than the other factors that you've
20 listed just now?
21 A. I'd have to reflect on it.
22 Q. But right now as you're sitting here, it's a
23 specific conversation you had with Senator Fraser and
24 it's all these other reasons that you've listed that
25 lead you to the belief that this bill purposefully

170

1 discriminated, correct?
2 A. Yes.
3 Q. There aren't additional factors -- other than the
4 multitude of things you've just listed, there aren't
5 additional factors that lead you to that opinion,
6 correct?
7 A. There might be some. I'd have to --
8 Q. There may be some but as you're sitting here, you
9 can't think of what those are?
10 A. Not off the top of my head.
11 Q. So, let's go over -- part of my goal here is to
12 find out -- you're going to testify in Washington, DC.
13 You've been disclosed as a potential witness. So, part
14 of my goal here is to find out what it is that Senator
15 Rodney Ellis believes.
16 So, we've gone through, have we not,
17 comprehensively, the reasons that you believe that
18 Senate Bill 14 purposefully discriminates against racial
19 minorities, correct?
20 A. That's correct.
21 Q. Okay. Now, one of the factors you've said -- and
22 I want to go through each one. I think we've talked at
23 some length about why -- about what you felt was the
24 lack of data that was in existence by the proponents of
25 the bill.

171

1 Okay. Is there anything else about that issue
2 that we haven't discussed other than the fact that -- I
3 think you've testified many times that you asked for
4 specific data and were not provided that data. Is there
5 anything else?

6 A. Not that I can think of at this moment.

7 Q. Okay. The next thing you said was that
8 proponents of the bill wouldn't -- that certain
9 amendments were not accepted. I want to know what you
10 have in mind as the specific amendments that you believe
11 show evidence of purposeful discrimination.

12 A. The fact that they wouldn't accept my amendment
13 that said go and do the research after this is in effect
14 and see what impact it will have on minority voters, and
15 the fact that you wouldn't want to go and do the
16 research even after you have gotten the bill passed to
17 see if the issues I'm raising end up being true or not,
18 to me indicates some discriminatory intent because to me
19 it indicates you think you have something to hide, which
20 is why you don't want to know.

21 Q. Okay. What other amendments do you specifically
22 have in mind?

23 A. I'd have to go through all of the amendments, and
24 I have not -- I didn't go prep myself for this meeting
25 to go through all of the amendments that were offered.

172

1 I know I developed a good number of them, working with
2 my staff, but I'd have to go through that list of them.

3 To the best of my knowledge, we had some pretty
4 good amendments that would show that a reasonable person
5 that did not have the intent to discriminate would have
6 agreed with some of those amendments.

7 You know, same day registration, as an example,
8 if you want to make sure you don't have a
9 disproportionate impact on certain groups of people who
10 may not already be registered to vote and your real
11 intent is to make sure that people who are voting are
12 the right people, you don't have any fraud, considering
13 the low number of people that vote, why wouldn't you go
14 ahead and spend the money to put the apparatus in place
15 to check those things out the same day?

16 I think somebody offered an amendment -- I'm not
17 sure. I'd have to go back and look -- to come up with
18 some version of a universal state ID that everybody in
19 the State of Texas would have. I'd have to go back and
20 look at the list but I can remember internal discussions
21 about doing that.

22 There were things one could do if your real
23 intent was to make sure that you didn't have fraud in
24 voting but if your intent was really to discriminate
25 against certain groups that you fear may have clout at

173

1 some point in voting patterns, you would be opposed to
2 those things.

3 Q. Okay.

4 A. So, that's what would give me the impression that
5 that was a discriminatory intent.

6 Q. You've cited now a second amendment, and that one
7 is a universal ID amendment. Now, can you tell me which
8 Senator offered that amendment, do you recall?

9 A. I have no idea. You would have to -- and I would
10 be more than happy -- if you want to come up with the
11 complete list of amendments --

12 Q. I know I could do that. I'm asking you what your
13 opinion is on -- I want to ask you about what your
14 knowledge is as you're sitting here about that
15 amendment.

16 So, my question is with respect to the universal
17 amendment, you don't know who specifically offered that
18 one?

19 A. No.

20 Q. With respect to that amendment, you're saying
21 that you would have been supportive of a universal type
22 of ID system -- photo identification system within the
23 State of Texas?

24 A. I'm saying that there are things that you could
25 have put in a bill, and if I was confident that all of

174

1 them would stay in the bill, going through the
2 legislative process, the way the game works sometimes,
3 you take anything to get a bill out of a committee or
4 out of one chamber and then take it out of the other
5 chamber or go into a conference committee and I take it
6 out.

7 But yeah, there are ways you could structure --
8 you know, I've heard discussions from around the country
9 or discussions with my colleagues, you know, some people
10 who oppose a notion of a universal ID system -- you
11 know, I can remember conversations with people about it
12 in Mexico, as an example, where they put an inordinate
13 amount of money into the infrastructure of voting, or in
14 Brazil where, to make sure you don't have a
15 disproportionate impact, they give you a ticket and you
16 pay a minor fine if you don't vote.

17 There are things in other countries around the
18 world where people do stuff to make sure the turnout is
19 up, more people have to participate to where you don't
20 have a disproportionate impact but that was not the
21 intent here in Texas.

22 Q. Is it a fair statement that you would be
23 supportive of a universal photo identification
24 requirement within the State of Texas?

25 A. I would have to go look at how it's implemented,

175

1 how it's put together but some version of it, I would be
2 for it.

3 Q. Tell me the version you would have been
4 supportive of regarding a universal photo identification
5 from the State of Texas.

6 A. I would have to put you on my staff to go do the
7 research, and then I could tell you what version of it I
8 would be for.

9 Q. So, is it a fair statement that there is a
10 universal type photo identification system that would be
11 statewide that you could support, as far as the details
12 of what that would be, you can't articulate that right
13 now but you would be supportive of such a concept?

14 A. I would have to put some parameters on it,
15 something so that everybody had access, you weren't
16 targeting any groups in terms of gender, race, age,
17 disability and everybody had the ability to participate.

18 You know, that's why I made reference to the
19 notion of same day registration, as an example. There
20 are things that one could do so that you wouldn't have a
21 disproportionate discriminatory impact on certain
22 groups.

23 Q. And one of those things would be a universal
24 identification system within the State of Texas
25 requiring voters to show a photo identification, and

176

1 that's something you would support if the details were
2 right?

3 A. I'm saying if you had a system where everybody
4 had access, if at birth -- you would have to work out
5 the ramifications of what if you move out of state, when
6 you come back in -- if there were some fool proof way of
7 making sure that you didn't have a disparate impact, a
8 discriminatory impact on any particular group, I would
9 not be bothered, whether based on income -- now, you
10 know, how you work that out in utopia, I don't know, and
11 I would have to put some smart people around me to
12 figure out how to do that.

13 Q. But from 2005 to 2011, the issue of photo
14 identification requirements were issues that were
15 discussed within the Texas Senate and Texas House,
16 correct?

17 A. That's correct.

18 Q. In that six-year time period, did you at any
19 point offer an amendment or offer legislation regarding
20 this type of universal photo identification system
21 within the State of Texas that would be required to
22 allow individuals to vote?

23 A. No.

24 Q. Did you -- so, since your -- you would be
25 theoretically in favor of such a concept, did you ever

177

1 put pen to paper and discuss this on the floor of the
2 House or introduce legislation regarding this issue?

3 A. No. I was not advocating the issue. That's like
4 asking me if I'm for everybody getting into heaven, am I
5 going to develop a game plan to get them there.

6 Look, I'm a person who carries a lot of bills,
7 gets involved in a lot of issues, but no, I didn't see
8 it as my responsibility to go figure out how to take
9 their bill, which had discriminatory intent, and figure
10 out how to make it work.

11 Q. And you certainly offered no amendments with
12 respect to a universal identification system yourself?

13 A. I offered a bill for same day registration.
14 Obviously, if you're going to have same day
15 registration, that in and of itself implies that you've
16 got to have a system on that day that somebody shows up
17 to the polls, as they do in Iowa, to make sure that the
18 person is valid.

19 So, within the concept of maybe a one or two page
20 amendment, one would have had to flesh out all of the
21 details if it had been accepted and get it in the body
22 of the bill to make sure you could have universal same
23 day registration, which in and of itself implies you've
24 got to have some way of verifying who the person is.

25 Q. Is it against current law for noncitizens to vote

178

1 in the State of Texas?

2 A. I think so.

3 Q. Okay. Is it against the law for permanent
4 residents who are noncitizens to vote?

5 A. I'd have to go back and check but I don't think
6 it's legal for them to vote.

7 Q. And is that -- by itself, is that discriminatory?
8 Is that a discriminatory law, in your view?

9 A. You need to be a citizen to be able to vote.

10 Q. So, no?

11 A. No.

12 Q. Is it evidence of a discriminatory purpose, in
13 your view, to strengthen voting laws to make sure that
14 citizens, rather than noncitizens, are the ones who are
15 voting?

16 A. If there is a way to do that so that you do not
17 have a disparate impact on other groups, I have no
18 problem with that.

19 Q. So, it's not discriminatory, in your view, by
20 itself, to strengthen protections against noncitizens
21 voting, correct?

22 A. It depends on how the bill is crafted.

23 Q. So, that's no to my question?

24 A. That's it depends.

25 Q. So, it is not, in your view, discriminatory by

179

1 itself to strengthen protections against noncitizens
 2 voting?
 3 A. I don't have a problem with making sure that you
 4 do not let people who are not supposed to vote not vote
 5 as long as you don't do it in such a way that you
 6 discriminate against other people who do have the right
 7 to vote.
 8 Q. So, that's a valid concern. It is a valid
 9 concern to make sure that individuals -- to make sure
 10 that citizens are the people who are voting and
 11 noncitizens are not?
 12 A. Well, that would be your opinion. I've not seen
 13 any evidence in Texas that we have had a problem with
 14 people who are not citizens voting. Most people who are
 15 not citizens in this state, unless there's some
 16 challenge with them on thinking, the last thing they
 17 want to do is come above the surface and be seen in this
 18 state. That's the quickest way to get deported. I've
 19 not seen anybody who has shown me any evidence to prove
 20 that.
 21 MR. SWEETEN: I want you to read back my
 22 question that I asked prior to Senator Ellis' answer.
 23 (Whereupon, the requested testimony was read back
 24 as follows:
 25 QUESTION: So, that's a valid concern. It is a

180

1 valid concern to make sure that individuals -- to
 2 make sure that citizens are the people who are
 3 voting and noncitizens are not?)
 4 THE WITNESS: Okay. Now I want you to read
 5 back my answer to his question.
 6 (Whereupon, the requested testimony was read back
 7 as follows:
 8 ANSWER: Well, that would be your opinion. I've
 9 not seen any evidence in Texas that we have had a
 10 problem with people who are not citizens voting.
 11 Most people who are not citizens in this state,
 12 unless there's some challenge with them on
 13 thinking, the last thing they want to do is come
 14 above the surface and be seen in this state.
 15 That's the quickest way to get deported. I've
 16 not seen anybody who has shown me any evidence to
 17 prove that.)
 18 Q. (BY MR. SWEETEN) It's a valid concern --
 19 MR. DUNN: Could you ask a complete
 20 question? What is the valid concern?
 21 MR. SWEETEN: I'm finishing the question.
 22 MR. DUNN: Sorry.
 23 THE WITNESS: Don't interrupt him.
 24 MR. DUNN: I noticed.
 25 THE WITNESS: And don't you interrupt me.

181

1 MR. SWEETEN: Nobody has interrupted anybody
 2 as far as I can tell.
 3 Q. (BY MR. SWEETEN) All right. It's a valid
 4 concern to make sure that citizens are voting and
 5 noncitizens are not, correct?
 6 A. I have seen no evidence that people in Texas who
 7 are not here legally are voting. And if there is any
 8 evidence of it, I would like to see it.
 9 I have speculated that if anybody wanted to find
 10 any evidence, you ought to look for it with mail-in
 11 ballots, not in terms of people showing up to go and
 12 vote.
 13 Q. You're answering another question.
 14 My question is: Is it a valid concern to make
 15 sure that citizens who are able to vote are the people
 16 that are voting, rather than noncitizens?
 17 MR. DUNN: Objection. Asked and answered.
 18 A. I don't think people who are not in this country
 19 legally ought to be able to vote, and I don't think in
 20 Texas we have a problem with people who are not here
 21 legally voting. I think our current laws adequately
 22 protect us from that.
 23 Q. (BY MR. SWEETEN) I understand that you think
 24 it's not a problem. My question, though, is do you
 25 think it's a valid concern to make sure that those who

182

1 are voting are citizens?
 2 A. Hey, I agree with the law. I agree with the law
 3 that says if you're not a citizen of Texas -- of the
 4 United States, you ought to not be able to vote in
 5 Texas. I agree with that law.
 6 Q. Do you think voter fraud occurs in the State of
 7 Texas?
 8 A. I think if it does occur, it would occur with
 9 mail-in ballots, which this bill does not impact. I do
 10 not think it is occurring -- I've not seen it.
 11 Q. You don't believe that voter fraud occurs in the
 12 State of Texas?
 13 A. Look, I think there's always a possibility of
 14 some kind of fraud, whether it's in voting, whether it's
 15 in campaign finance. I mean, that's why we have laws on
 16 the book to keep those things from happening. I think
 17 there are crimes committed all over the place.
 18 Q. So, you do think voter fraud occurs in the State
 19 of Texas?
 20 A. I haven't seen any evidence of it but I wouldn't
 21 go on a limb to say it has never happened, never could
 22 happen.
 23 Q. Do you agree voter fraud is a very difficult
 24 crime to detect?
 25 A. No, I don't.

183

1 Q. And what's the support you have for that opinion?

2 A. Well, the fact there's so few people in Texas are
3 voting, out of 25 million people, that in and of itself
4 tends to limit the extent to which you have any of it
5 happening, and because I think the proponents of this
6 legislation have spent an inordinate amount of money
7 looking for it and haven't found it yet.

8 Q. Are you aware of testimony on the floor of the
9 Senate that -- about instances of voter fraud? Do you
10 recall those?

11 A. I do.

12 Q. Do you recall -- have you talked with any sort of
13 law enforcement personnel about how difficult or whether
14 or not voter fraud is a difficult crime to detect?

15 A. Not recently.

16 Q. Have you at any point?

17 A. I did ask around people who were around the
18 Capitol during the last session, some law enforcement
19 people, is it a challenge.

20 Q. And can you tell me who specifically you talked
21 to?

22 A. Don't recall.

23 Q. Okay. Is it your opinion that voter fraud is not
24 a very difficult crime to detect?

25 MR. DUNN: Objection. Asked and answered.

184

1 A. In my opinion, the State has not proven any major
2 incidence of voter fraud in Texas.

3 Q. (BY MR. SWEETEN) But my question is about the
4 difficulty of detection of voter fraud. Do you have any
5 opinion one way or the other about whether or not it's a
6 difficult crime to detect?

7 MR. DUNN: Objection. Asked and answered.

8 A. I don't know.

9 Q. (BY MR. SWEETEN) I'm going to read some language
10 for you, and I want to ask you questions about it.

11 "The electoral system cannot inspire public
12 confidence if no safeguards exist to detect or deter
13 voter fraud or to confirm the identity of a voter."
14 Would you agree with that statement?

15 A. Say it again.

16 Q. "The electoral system cannot inspire public
17 confidence if no safeguards exist to detect or deter
18 voter fraud or to confirm the identity of a voter." You
19 agree with that statement?

20 A. I think we have adequate safeguards.

21 Q. But that's not my question.

22 My question is: Do you agree with the statement
23 that I just read to you?

24 A. Somewhat. And the reason I say somewhat is
25 because I think we have adequate safeguards. I think

185

1 that statement is used by people who want to perpetuate
2 things that will inhibit certain groups of people from
3 voting instead of trying to go after what they consider
4 voter fraud.

5 Q. Okay. So, your opinion is yes, that the
6 electoral system can inspire public confidence if no
7 safeguards exist to detect or deter voter fraud but
8 you're just saying that current systems are adequate to
9 do that, is that a fair statement?

10 A. That's what I said.

11 Q. Okay. Do you agree with the following quote:
12 "Citizens should identify themselves as the correct
13 person on the registration list when they vote"?

14 A. Yes.

15 Q. Okay. Do you agree with this statement: "The
16 perception of possible fraud contributes to low
17 confidence in the voting system"?

18 A. No.

19 Q. Let me ask you about this statement. Do you
20 agree that, "A good ID system could deter, detect or
21 eliminate several potential avenues of fraud, such as
22 multiple voting or voting by individuals using the
23 identities of others, those who are deceased and could
24 enhance confidence"?

25 A. Read it again.

186

1 Q. "A good ID system could deter or detect or
2 eliminate several potential avenues of fraud, such as
3 multiple voting or by individuals using the identity of
4 others or those who are deceased and, thus, it can
5 enhance confidence"?

6 A. Seems a little wishy washy to me.

7 Q. Okay.

8 A. I think that statement could also lead to
9 advocating policies that would keep certain groups of
10 people from voting, could be used as a way to keep
11 certain groups of people from voting.

12 Q. Were you present during the Committee of the
13 Whole proceedings when Tommy Williams' brother testified
14 about -- on the public record about an instance of
15 voting fraud involving Senator Williams' maternal
16 grandfather?

17 A. I vaguely remember it.

18 Q. Do you have any reason to dispute that someone
19 voted on Senator Williams' deceased grandfather's voting
20 registration?

21 A. I really don't know much of the details about his
22 family voting history.

23 MR. DUNN: Whenever you get a minute, I need
24 to a take a break.

25 (Short recess.)

187

1 Q. (BY MR. SWEETEN) What did you do to prepare for
2 this deposition?

3 A. I looked at -- I glanced over -- not much. I
4 glanced over my affidavit, and I asked my staff to pull
5 together whatever I said on the floor and whatever
6 amendments I offered. Obviously, not too much because I
7 couldn't remember the third amendment.

8 Q. Did you have any discussions with any of the
9 individuals who have been deposed in this case?

10 MR. DUNN: I'm not sure he would know that.

11 Q. (BY MR. SWEETEN) I can go through it.

12 Did you have any discussions with Representative
13 Anchia prior to this deposition?

14 A. No. Well, yeah.

15 Q. Regarding the deposition?

16 A. No, not regarding this.

17 Q. Did you discuss the deposition with Senator
18 Uresti?

19 A. No.

20 Q. Did you discuss the deposition with Senator
21 Davis?

22 A. No.

23 Q. Did you discuss any depositions with -- the
24 subject of depositions with any other Senators who have
25 been deposed in this case that you know of?

188

1 A. I don't think so.

2 Q. Did you read deposition transcripts in
3 preparation for this?

4 A. No. Didn't even read the one that I got last
5 night from what I said yesterday.

6 Q. Did you talk with individuals at the Justice
7 Department prior to this deposition about the
8 deposition?

9 A. No.

10 Q. When is the last conversation you had with
11 individuals at the Justice Department?

12 A. About two minutes ago.

13 Q. Who did you talk to?

14 A. I asked Jennifer how she was doing.

15 Q. How about before the deposition, Senator?

16 A. I haven't had any conversations with Justice
17 about the deposition. Now, in terms of the last time I
18 spoke to someone from the Justice Department -- this is
19 just mere speculation on my part. I saw the Attorney
20 General in Houston a month, six weeks ago, not talking
21 about this case, just saying he's doing a good job. I
22 think I saw him at something in Washington or New York.
23 I did a little wave. I think I did a little handshake
24 but no -- and I have talked to somebody in Justice about
25 Innocence Project stuff within the last -- I was at some

189

1 symposium in DC six weeks ago, a month ago. About six
2 weeks ago. But I cannot -- I don't recall any specific
3 conversations about this issue.

4 Q. Okay. Now, when we -- let's go back because we
5 were -- I was asking you about the reasons that you
6 believe that this bill purposefully discriminated. And
7 we talked about accepting amendments, that amendments
8 weren't accepted. Are there any additional amendments
9 other than what we've talked about that lead you to
10 believe that -- that support your belief that Senate
11 Bill 14 was passed with the purpose of discriminating
12 against racial minorities?

13 A. Yes.

14 Q. Okay. What are those amendments?

15 A. I'm just speculating because I don't have a list
16 of amendments in front of me, since we're on the record,
17 but I met with a number of the minority -- of the
18 Senators who represent large minority populations in
19 their districts, and I met with my staff, and I met with
20 some of the civil rights groups, Urban -- NAACP, lawyers
21 and other folks, asking, you know, what can we come up
22 with to make a bill that looks like it's going to pass a
23 better bill, to address some of these issues.

24 So, we had a long laundry list of them. And I
25 can remember my staff sorting amendments out that would

190

1 go to different people. I don't have the list in front
2 of me, so, I'm just guessing if I were trying to back up
3 to a year and a half ago and figure out -- or a year
4 ago -- you know, what kind of things I would have been
5 discussing.

6 Resources, you know, amendments. I assume one
7 was offered that you've got to put some resources in
8 here to do this stuff, and there was no interest in
9 doing that.

10 You know, stuff like making sure that whatever ID
11 this is -- folk can get it easily, you know, put
12 together some system with the bells and whistles so it
13 is easily accessible.

14 Same day stuff. I'd just have to through a list
15 of them but we had a pretty good list, I think, of them.

16 Q. Let me ask about your amendments first. Had your
17 amendments been accepted, would you have voted for
18 Senate Bill 14?

19 MR. DUNN: Objection. Asked and answered.

20 THE WITNESS: Say again.

21 MR. DUNN: I objected that it was asked and
22 answered.

23 But you can answer.

24 THE WITNESS: You need some coffee there,
25 slurring those words.

191

1 A. I offered three amendments. One had nothing to
 2 do with making the current bill better, the one that
 3 said do an annual study to see if it has a
 4 discriminatory impact on certain groups. So, obviously,
 5 if that had been accepted, it wasn't improving the bill,
 6 it was just going to see whether or not the concerns
 7 that I raised and were not responded to would be
 8 answered.
 9 The one on same day registration, no, if that had
 10 been accepted, I would not have voted for it.
 11 The other one on student ID -- if the three that
 12 I offered had been accepted, I wouldn't have voted for
 13 it.
 14 Q. (BY MR. SWEETEN) You would--
 15 A. I would not have voted for it.
 16 Q. What amendments, as you're sitting here that you
 17 have knowledge of, would have made you vote -- or would
 18 have motivated you to vote for Senate Bill 14?
 19 A. If there had been an amendment to repeal
 20 everything below the caption, I would have voted for it.
 21 Q. So, any of the amendments that were offered, you
 22 wouldn't have supported Senate Bill 14 one way -- in any
 23 event?
 24 A. I'm not positive. If there had been an amendment
 25 to pay to set up the apparatus, to pay for a universal

192

1 statewide identification system with same day
 2 registration, there are versions of voter identification
 3 that I could support but that was not -- you know, look,
 4 it was a given that my colleagues were not going to put
 5 up the resources to do that but I can think of --
 6 whether an amendment was offered or not, I don't know --
 7 from conversations with some people in the House -- if
 8 we were going to put in as much in terms of resources
 9 that the government of Mexico, as an example, put in,
 10 and I can remember a dialogue with adding what Brazil
 11 does in terms of a minor ticket, 2 bucks, whatever it
 12 is, for people not to vote, to make sure that you really
 13 are encouraging voter participation and not having any
 14 of those issues.
 15 Q. You would support a bill that would require --
 16 that would actually fine people for not voting, that's
 17 something that you would support?
 18 A. That's a concept that -- I've look at some
 19 election data around the globe, to be honest with you.
 20 That's a concept that I think is worth exploring. There
 21 are checks and balances to it as well. Maybe
 22 constitutional issues in our constitution that may come
 23 up but to respond to the implication, I'm very concerned
 24 about the low level of voter participation in Texas,
 25 much lower than the national norm.

193

1 Q. And a bill that you would support -- a voter ID
 2 bill that you would support would allow for a universal
 3 photo identification system in Texas if the details were
 4 right, correct?
 5 A. I could -- I could -- it would take some effort
 6 but I could probably get there.
 7 Q. Would that universal ID system include current --
 8 use of driver's license by voters or, in Senator Ellis'
 9 mind, would it be a new type of a photo identification
 10 issue?
 11 A. If I were going to do it, it would be a
 12 combination. First of all, I would have to make sure
 13 that you couldn't take somebody driver's license because
 14 they owed a fine or you couldn't keep someone from
 15 getting a driver's license because they didn't have
 16 insurance but on the other hand -- because a driver's
 17 license is probably the most common form of ID, I
 18 wouldn't want other people to be in a position that I'm
 19 in of having too many credit cards in the wallet and
 20 trying to figure out which ones to get rid of, and then
 21 you find out they don't take American Express.
 22 Q. So, a photo identification bill that you would
 23 support would include the use of driver's license, photo
 24 identification, in addition to a new type of universal
 25 photo identification with a picture ID?

194

1 A. I don't know if I would get hung up on the photo
 2 part as much as making sure I could verify that the
 3 person is who they say they are. There are a number of
 4 things that you could include, like letting someone vote
 5 and verifying it later. With low voter participation,
 6 I'm very leery of anything that reduces the number of
 7 people who legally can vote but don't vote.
 8 Q. Would your system that you would advocate
 9 regarding some sort of identification system, would it
 10 include correspondence sent to a voter by an official
 11 state agency? Would that be sufficient, in your view?
 12 A. No. It would have to be that and other things.
 13 I know that we've got in Houston a large number of
 14 rental units and, you know, I have a daughter who is out
 15 of the country now, and if she doesn't vote for a cycle
 16 and then she comes back and wants to vote, she ends up
 17 being purged. Her residence is still my home but she's
 18 traveling the world for a year.
 19 So, I mean, it would -- it would be that among
 20 other things. You would have to throw in same day
 21 registration. You know, I could get there. I normally
 22 am not in the habit of developing legislation in a
 23 deposition or in a courtroom but you could go through a
 24 process if what you're trying to do is figure out how to
 25 make sure that you don't have the wrong people voting

195

1 but you don't penalize having the right people vote.
 2 Q. Is it a fair statement that you believe there's
 3 room for improvement under the current system, it's just
 4 a question of what are the details of how that
 5 improvement should take place?

6 A. Improvement in what way? I think there's room
 7 for improvement in terms of increasing voter
 8 participation. I don't think that we have a problem
 9 with voter fraud in terms of people showing up to vote.

10 Q. You don't think that there is any room for
 11 improvement under current law for verifying that those
 12 voters who show up to the polls are who they say they
 13 are?

14 A. I think there's always room for improvement in
 15 any law.

16 Q. Including this one, including the current
 17 voting?

18 A. Including the current voting.

19 Q. All right. You also said -- when I asked you
 20 about the reasons you believe Senate Bill 14
 21 purposefully discriminated, you indicated -- and I got
 22 this partially down, so, you're going to have to help me
 23 with this but I wrote, "not include absentee voting."

24 Do you recall what that specific --

25 A. I don't know. Do you know? Which part are you

196

1 talking about? Were you reviewing my transcript last
 2 night?

3 Q. Not last night. You just said it this morning,
 4 actually.

5 MR. SWEETEN: If you could do a search on
 6 "absentee voting" from earlier today.
 7 (Whereupon, the requested testimony was read back
 8 as follows:

9 ANSWER: The fact that they would not accept
 10 amendments on issues like do the research to see
 11 what impact it will have. The fact that they did
 12 not include absentee voting, where somebody can
 13 mark a ballot for someone when they mail a ballot
 14 to them.)

15 Q. (BY MR. SWEETEN) So, she just reread the part
 16 that said that they did not include absentee voting
 17 where someone could mark a ballot. She's now read that
 18 to you. Do you recall that answer?

19 A. Yes.

20 Q. Can you tell me what you meant by that?

21 A. I meant that they did not apply the photo
 22 identification requirement to mail-in ballots. When you
 23 are as old as I am, young man, sometimes the terms
 24 change. So, in the old days, before we had this
 25 two-week early voting period, if you were going to be

197

1 out of town, you had to do a mail-in ballot. Now you
 2 can -- the no excuse voting, early voting, whatever we
 3 call it, for a two-week or ten-day period but in the old
 4 days, we called that absentee ballot.

5 This does not apply to mail-in ballots because,
 6 in my judgment, the folks who were pushing the bill know
 7 that mail-in ballots tend not to be an area where you
 8 have large numbers of African Americans and Hispanics.
 9 It takes a little more wealth. You've got to be a bit
 10 more organized. You've got to have some resources to go
 11 mail a ballot to the home of someone, and a lot of them
 12 tend to be elderly voters but you won't have as large a
 13 number of African Americans and Hispanics in that pool.

14 Well, it didn't apply to this, and I've always
 15 thought that if there is some fraud -- not being able to
 16 prove it but if there is some fraud, a lot of the cases
 17 have been cases where somebody had one of these mail-in
 18 ballots, and they go to some grandmother's,
 19 grandfather's, older neighbor's home, and they go in
 20 there and vote for them and mail it in.

21 Q. So, part of why you think that Senate Bill 14 had
 22 a discriminatory purpose is that it didn't address
 23 mail-in balloting?

24 A. In this sense, I agree with that comment, I would
 25 say in this sense, most of those mail-in ballots or a

198

1 disproportionate number of those will be nonminority
 2 voters just because of the comment I was making, it
 3 takes some resources to organize a campaign. They tend
 4 to be more affluent, when a candidate, whoever, can
 5 organize to go pay the money to send that mail-in
 6 ballot, have somebody go knock on that door and do a
 7 mail-in ballot.

8 And I think that is an area where if some
 9 chicanery was going to go on, it could go on but most of
 10 those voters are white. They tend not to be African
 11 American and Hispanic voters, and they didn't go and
 12 touch that space with the voter ID requirement.

13 They are going after the area where I think
 14 minorities would not have a driver's license, have
 15 challenges finding the time, resources to go way out
 16 somewhere. If they're working some place, they've got
 17 to go after working hours, to find the place to go get
 18 this state ID.

19 Q. So, addressing in-person voting fraud in and of
 20 itself without addressing mail-in ballot fraud, to you,
 21 shows a discriminatory purpose?

22 A. It implied to me you are picking and choosing,
 23 and you are picking to add barriers in an area where
 24 most of the minorities would be impacted the most, as
 25 opposed to adding barriers in the area where you don't

<p style="text-align: center;">199</p> <p>1 have as many minorities.</p> <p>2 Q. Okay.</p> <p>3 A. And you could have more -- if there is fraud, you</p> <p>4 could have more there, just based on my common sense</p> <p>5 approach to watching the elections.</p> <p>6 Q. Another reason you cited that you believe Senate</p> <p>7 Bill 14 purposefully discriminated was you said that</p> <p>8 proponents showed some insensitivity to showing data</p> <p>9 that would indicate the impact of -- or the effect of</p> <p>10 the bill on racial minorities. You said that, correct?</p> <p>11 That was one of your reasons?</p> <p>12 A. Yes.</p> <p>13 Q. And yesterday we discussed this to some degree.</p> <p>14 Is there any other -- do you have any other testimony</p> <p>15 that supports that statement?</p> <p>16 A. Any other -- do I want to add anything?</p> <p>17 Q. Yes. Is there anything that you haven't told me</p> <p>18 in this deposition? You've told me about the fact that</p> <p>19 there was a lack of data. You said that -- your</p> <p>20 testimony was that you asked for data, it wasn't</p> <p>21 provided. Is there any other instance that shows</p> <p>22 insensitivity to showing data that this bill would not</p> <p>23 have a discriminatory effect?</p> <p>24 A. You asked earlier about what did I do to get</p> <p>25 prepared. Before I went to bed about 1:00 a.m., I just</p>	<p style="text-align: center;">201</p> <p>1 Q. And when you say a lot of that, you're saying</p> <p>2 there's information in the public sphere that you could</p> <p>3 google that you don't think was presented by proponents</p> <p>4 of the bill, correct?</p> <p>5 A. Proponents as well as opponents.</p> <p>6 Q. Okay. Now, certainly the opponents had that</p> <p>7 opportunity with respect to Senate Bill 14 or other</p> <p>8 voter ID bills before the Senate, certainly that</p> <p>9 opportunity was present to present that publicly</p> <p>10 available information?</p> <p>11 A. To someone outside the sausage making process,</p> <p>12 that comment is easy to make. Someone who's been in the</p> <p>13 process all their life -- you know, about 5,000 bills</p> <p>14 that are introduced during a 140-day legislative</p> <p>15 session, the most important bill being the budget. It's</p> <p>16 a part-time job. It's a \$600 a month job.</p> <p>17 On this bill, once the rules were changed,</p> <p>18 tradition was thrown out the window, and it was passed</p> <p>19 by a majority vote.</p> <p>20 In our public as well as private meetings,</p> <p>21 without naming any members, there's pretty much</p> <p>22 consensus this is what it is. We will take everything.</p> <p>23 We will agree. Make a motion, everything that was in</p> <p>24 the record from last session, which nobody would</p> <p>25 remember, you can put that in but, hey, we have our</p>
<p style="text-align: center;">200</p> <p>1 googled in disparate impact of voter ID laws. And I had</p> <p>2 a few other things to do at 1:00 a.m. but a whole</p> <p>3 laundry list of scholarly reports popped up.</p> <p>4 Just glancing through them, I'm assuming on both</p> <p>5 sides, just by googling that in at 1:00 a.m. in the</p> <p>6 morning. And, you know, as I said, I saw some kind of</p> <p>7 going on both sides. I saw that Carter/Baker thing, the</p> <p>8 Brennan thing, a whole laundry list of them.</p> <p>9 I don't know if -- I saw some reference to South</p> <p>10 Carolina that I hadn't seen before but a whole laundry</p> <p>11 list of them came up.</p> <p>12 I think if I had been pushing the bill, I would</p> <p>13 have felt it was incumbent upon me -- if I'm trying to</p> <p>14 pass something and I want people to have confidence in</p> <p>15 me, I'm going to go give them both sides. I take the</p> <p>16 position of a good lobbyist. When you're trying to pass</p> <p>17 a bill, you're lobbying for it. I take it as my</p> <p>18 responsibility to lay out both sides.</p> <p>19 Q. Okay.</p> <p>20 A. And when all of that popped up, for that not to</p> <p>21 have -- some of those maybe had been around before the</p> <p>22 bill passed. Obviously, you've got advocacy groups on</p> <p>23 both sides doing work. I didn't see any polling data</p> <p>24 but then I went on it sleep about 1:20. So, I think a</p> <p>25 lot of that should have come out in that session.</p>	<p style="text-align: center;">202</p> <p>1 votes, you don't have your votes, you know, I know you</p> <p>2 all have got to make a record so when it ends up in</p> <p>3 court, it's going to be there but let's just get this on</p> <p>4 out of the way so we can agree to disagree and, you</p> <p>5 know, when it's over with, for the good of the 25</p> <p>6 million people in the State, we are going to all get</p> <p>7 along, and we're going to go on and go to the next</p> <p>8 issue.</p> <p>9 So, what I'm saying to you is -- one second.</p> <p>10 What I'm saying to you is to make the comment -- if you</p> <p>11 on your side or the other side or the distinguished</p> <p>12 judges that hopefully will be reading all of this, you</p> <p>13 can't encapsule what goes on in our body, in our process</p> <p>14 of sausage making just by saying both sides had a chance</p> <p>15 to put this in. Sometimes you don't put stuff in when</p> <p>16 nobody is listening. You got me?</p> <p>17 Q. Well, in 2009, there was an over 24-hour debate</p> <p>18 of Senate Bill 362. You indicated that was incorporated</p> <p>19 into the record in 2011. That's correct, right?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Certainly within that time period, as well as the</p> <p>22 Committee of the Whole proceedings that occurred in 2011</p> <p>23 regarding Senate Bill 14, there was ample opportunity</p> <p>24 for opponents of the bill to present evidence that</p> <p>25 you're referencing that is in the public sphere in</p>

203

1 support of or in opposition to Senate Bill 14, would you
2 agree with that?
3 A. What I'm saying to you is that in the process of
4 making the case on this legislation, there was always
5 the assumption that bright people like you, like the
6 Justice Department that's on the phone, like the lawyers
7 on our side, would have all of the empirical evidence to
8 make the case on what's right, what's wrong, what's out
9 there in the public sphere.
10 I bet if you go search the record, you will find
11 somebody making the comment, "We will agree that you all
12 can put everything in the record from last session and
13 everything else in the world."
14 So, I'm saying in no way did we ever feel, on my
15 side or the State's side -- the State meaning you
16 because my Republican colleagues had the resources of
17 the Attorney General and everybody behind them.
18 "Anything else that you all want to add, any
19 research that you can come up with that makes the case
20 on either side, you can do it." So, there was no need
21 to go in there and dig up every empirical study on both
22 sides or I didn't feel compelled to go take my campaign
23 money, since I couldn't use the State money, to go do a
24 poll to see whether or not my constituents would be for
25 the bill if they knew A, B, C. That's just not how it

204

1 works, with all due respect, that's what I'm saying.
2 Q. But I think somewhere within that answer you've
3 indicated that you were afforded the opportunity, to the
4 degree you wanted to put in information from the public
5 sphere that you've referenced that you googled last
6 night, that that opportunity was -- you were availed
7 that opportunity, correct?
8 A. I was given the opportunity to put everything in
9 I had and, by implication, anything else that comes up.
10 Q. In addition, during the Senate proceedings,
11 was -- it's a true statement, is it not, that the
12 Baker/Carter Commission report was discussed?
13 A. It was.
14 Q. Okay.
15 A. And most of us were looking at it as we were on
16 the floor.
17 Q. Okay. That's a report that had been released, I
18 think, in 2006, correct?
19 A. Yes.
20 Q. And you were looking at it on the floor, are you
21 indicating that you looked at it on the floor for the
22 first time in 2011?
23 A. I'm indicating that I would have looked at it
24 when the bill came up. It was not -- you know, I think
25 it was cited by an expert that came in from -- a think

205

1 tank out of Washington, DC who testified on the bill in
2 2011.
3 And so, he took one phrase out of it where he
4 made some comment to the effect, "President Jimmy Carter
5 was for this but didn't make reference to a footnote."
6 Someone pulled it up during the debate in 2009, where in
7 the Carter/Baker -- Baker/Carter report they said there
8 were legitimate concerns about a disparate impact on
9 African Americans and Hispanics.
10 So, what I'm saying is --
11 Q. Was that --
12 A. I'm sorry. It's not as on this bill -- it's not
13 as though this was the only bill. The way it works in
14 Texas in particular where you've got 140 days to
15 consider 5,000 bills, it's not as though anybody took
16 all their time and just focused on this one bill.
17 That's why I made reference the other day to the
18 Committee of the Whole.
19 Usually when it's in a committee, members put a
20 lot more time into digging into it, as opposed to all 31
21 of us considering a bill, which is why we normally take
22 the committee route to develop more expertise on a bill.
23 Q. But the Committee of the Whole is a committee,
24 it's just a committee of all the Senators?
25 A. Yeah.

206

1 Q. All the Senators have the right to participate in
2 that committee, unlike when you just have certain
3 committees looking at bills?
4 A. We always have a right by tradition. And I
5 probably exercised it a little more than most in the
6 last session. You can use your prerogative to walk into
7 any committee, whether you're on it or not, and
8 participate.
9 There are only 31 of us. It's the smallest
10 legislative body in the country with 31 of us. You can
11 go into committee at any time and participate.
12 Q. And the Committee of the Whole allows for full
13 participation -- it is the matter before the body when
14 you're in the Committee of the Whole, correct?
15 A. Yes.
16 Q. It has the focus and attention of the individuals
17 on the Committee of the Whole when a bill is before the
18 Committee of the Whole?
19 A. As you may recall, I would argue yesterday when
20 it's in the Committee of the Whole, it probably gets
21 less attention than when it is in a committee because
22 when it's in Committee of the Whole and you've got all
23 31 of us in there, there's room for a heck of a lot more
24 distraction. Were that not the case, they would take
25 the budget and everything else -- they'd take the most

207

1 important bill that we do every session and just do that
2 in Committee of the Whole.

3 Q. Okay. We've now gone through what you believe --
4 the reasons that you've cited that you believe Senate
5 Bill 14 purposefully discriminated against racial
6 minorities. Is there any other factor that you believe
7 supports your view that SB14 purposefully discriminates
8 against racial minorities?

9 A. As we sit here today, I think that I've given you
10 a pretty good laundry list. I cannot think of any more
11 right now but if I think of any, I'll let you know in
12 court or I'll pop you an E-mail and tell you before I
13 walk in if that's okay.

14 Q. Well, let's be clear. If you have any reasons in
15 support of your belief that Senate Bill 14 purposefully
16 discriminated against racial minorities, I'm asking you
17 now what those reasons are. And is it your testimony
18 that other than what you've said -- and we've been here
19 now for probably four hours total on the record -- have
20 you cited for me the reasons you believe that Senate
21 Bill 14 purposefully discriminated against racial
22 minorities?

23 MR. DUNN: Objection. Asked and answered.

24 A. How many do you have that I've gone through, just
25 to make sure I've got them all? Maybe she can read them

209

1 have your license, so, you can't use that, so, you're
2 going to go to the DPS office where you owe money,
3 you're going to walk in and say, "Can I get this state
4 ID?"

5 And then, I guess, those offices close at 5:00,
6 6:00 o'clock, and they are in locations where it's
7 difficult to get there by public transportation. I
8 guess the system -- we ought to give you a bicycle or
9 something to get out there. How do you know where they
10 are? And then the lines that we have. So, resources in
11 that sense.

12 Q. Any other reasons that you believe Senate Bill 14
13 had the purpose of discriminating other than what you've
14 testified to now?

15 A. I'm just going to try to rattle off if I can
16 think of them. In terms of the resource into it, we
17 don't come up with some fall back provision, like a same
18 day registration in case you show up and don't have the
19 deal, knowing the rules, knowing what they are, the fact
20 that there was ample evidence given that it might have a
21 discriminatory impact in Texas, and the people who were
22 promoting the bill didn't do anything to refute that or
23 try to ameliorate it other than to say, "I don't think."

24 I think that if I were pushing the bill, based on
25 the debate that we had, it would lead a reasonable

208

1 all to me again. Reasons that this bill is awful and
2 discriminates against minorities, that ought to be in
3 there somewhere. I think I made a reference to
4 resources. I hope I have because that is a big part of
5 it.

6 Q. (BY MR. SWEETEN) Well, let's talk about those
7 resources. You think resources of whom are a part of
8 what makes this bill purposefully discriminatory?

9 A. Resources of the State, first of all.

10 Q. Okay.

11 A. Resources in terms of paying to make sure that
12 people who don't have a government issued ID have one in
13 a form in which it is easy to get, it's not obtrusive,
14 you know, it's something small and if you lose it, you
15 can get another one, you don't have to go across town,
16 you don't have to, you know, figure out how you can get
17 it, if not on line -- some people don't have Internet
18 but how you get it, whatever we -- whatever we do, if
19 there's something we really want people to participate
20 in, we find a way to make it accessible and, obviously,
21 that takes some resources to do it.

22 But to say you can go get this new form of ID
23 that most people don't know about, won't know that the
24 law changed, and then to -- if you want to go get this
25 form of ID, you're going to go the DPS office, you don't

210

1 person to believe, you know what, this bill has a
2 discriminatory impact, intent. He, Senator Ellis, if I
3 was pushing it, knows that and he's willing to live with
4 that.

5 So, to me, as a reasonable person, I think that's
6 enough on the record and the issues that I think I have
7 laid out that would lead a reasonable person, in my
8 opinion, just my opinion, to believe that someone knew
9 the bill had discriminatory impact and they were going
10 to let that happen.

11 Q. Okay. And so, as I'm understanding your
12 testimony, you have articulated during the course of
13 this deposition the reasons you believe the bill was
14 purposefully discriminatory, correct?

15 A. I think I have.

16 Q. Is there anything else other than what we've
17 discussed at this point?

18 A. There may be but I just can't think of it off the
19 top of my head.

20 Q. As you're sitting here now, is there any other
21 reason?

22 A. Not as I'm sitting here now.

23 Q. Okay. I want to follow up on our prior
24 discussion of SR 521 from 1993, just a couple of
25 questions on that. Was that ultimately passed in the

<p style="text-align: center;">211</p> <p>1 Committee of the Whole?</p> <p>2 A. Which one is 521?</p> <p>3 Q. SR 521. We're going back to 1993.</p> <p>4 MR. DUNN: The judicial election.</p> <p>5 A. Senate Resolution 521?</p> <p>6 Q. (BY MR. SWEETEN) Yes, sir.</p> <p>7 A. Passed the Senate Committee of the Whole.</p> <p>8 Q. And it was by a vote of what? Do you know if it</p> <p>9 was 17/13?</p> <p>10 A. It was by a majority vote in the Senate Committee</p> <p>11 of the Whole. It did not pass the Senate. It passed a</p> <p>12 Senate committee. As you were saying earlier, it was</p> <p>13 the Senate Committee of the Whole because in order to</p> <p>14 avoid any of my colleagues feeling as though I</p> <p>15 circumvented the rules -- which the parliamentarian said</p> <p>16 I was not circumventing because it was a resolution,</p> <p>17 Senate Resolution, not SB, not a Senate Bill, just as if</p> <p>18 it was a resolution commending you on your birthday,</p> <p>19 those pass by majority vote, not by two-thirds vote.</p> <p>20 Q. And SR 521 passed the Committee of the Whole by a</p> <p>21 vote of 17/13, correct?</p> <p>22 A. You would have to show me that.</p> <p>23 Q. Okay.</p> <p>24 A. It was a majority.</p> <p>25 Q. It was a majority vote, not a two-thirds vote is</p>	<p style="text-align: center;">213</p> <p>1 to blow up -- just the perception that the two most</p> <p>2 important bills, as broke as we are, would be you're</p> <p>3 trying to rig it in your favor for votes, to</p> <p>4 disenfranchise minorities and to do redistricting before</p> <p>5 the census even comes out.</p> <p>6 So, they went back out and changed that and</p> <p>7 decided to only change it to do a majority vote on voter</p> <p>8 ID. So, on opening day, what Troy was doing was taking</p> <p>9 that same provision, which was an exception to the</p> <p>10 rules, which meant they wanted to do two-thirds on</p> <p>11 everything other than the voter ID bill.</p> <p>12 Q. And we've testified that is within the Senate's</p> <p>13 right to do?</p> <p>14 A. It's always within the Senate's right to break</p> <p>15 tradition, throw all decorum out of the door.</p> <p>16 Q. And to change -- the Senate has the absolute</p> <p>17 right to change the rules, the two-thirds rule to the</p> <p>18 extent they see fit?</p> <p>19 A. No motion is stare decisis in the Senate chamber.</p> <p>20 Q. And what you have to have to make those changes</p> <p>21 is the votes, is a majority vote to do that, right?</p> <p>22 A. That's correct.</p> <p>23 Q. And they had that?</p> <p>24 A. Sure did.</p> <p>25 Q. Okay. But my question when I asked it before was</p>
<p style="text-align: center;">212</p> <p>1 my question?</p> <p>2 A. That's right.</p> <p>3 Q. Okay. Do you know -- going back to 2011, do you</p> <p>4 know if when Senate Bill 14 was passed in January of</p> <p>5 2011 if there was even a blocker bill in place at that</p> <p>6 time?</p> <p>7 A. I think from my affidavit here, I stated that --</p> <p>8 2011 -- on January 12th -- number 7, "On January 12th,</p> <p>9 2011, the day after the ceremonial opening day of the</p> <p>10 82nd session of the Texas Legislature, Senator Fraser</p> <p>11 introduced Senate Bill 14. The Senate carried over the</p> <p>12 rule allowing legislation related to voter</p> <p>13 identification requirements to be passed by a simple</p> <p>14 majority vote into the 82nd Legislature."</p> <p>15 What that is making reference to is that in the</p> <p>16 previous session, I think it was Tommy who -- Senator</p> <p>17 Williams who on opening day, when you normally do the</p> <p>18 ceremonial stuff and everybody is hugging, he came up</p> <p>19 with a special order to do -- a so-called special order,</p> <p>20 which would be an exception to the rules, to do two</p> <p>21 things by a majority vote. I think it was redistricting</p> <p>22 and the voter ID bill.</p> <p>23 And then when -- I think we went into the back</p> <p>24 room and discussed it and persuaded our colleagues it's</p> <p>25 bad enough you're going to do voter ID but you're going</p>	<p style="text-align: center;">214</p> <p>1 do you know if when -- on January 25th, 2011 when Senate</p> <p>2 Bill 14 passed the Committee of the Whole, do you know</p> <p>3 if a blocker bill was in place at that time?</p> <p>4 A. I'm assuming that on the opening day, if he was</p> <p>5 adopting the rules from the previous session, the rules</p> <p>6 from the previous session would have given us a blocker</p> <p>7 bill for anything other than this one bill.</p> <p>8 Q. That's not my question. My question is on</p> <p>9 January 25th, 2011, was there even a blocker bill in</p> <p>10 place at that time?</p> <p>11 A. I don't know. You would have to go check the --</p> <p>12 go check the rules. And the reason I'm saying that is</p> <p>13 that our tradition has been for close to 100 years a</p> <p>14 two-thirds vote, period.</p> <p>15 Now, you know, there may have been times when</p> <p>16 there was no blocker bill in previous sessions but the</p> <p>17 tradition was you would have a two-thirds vote. The</p> <p>18 blocker bill was just some procedural maneuver so you</p> <p>19 could this is why you're having a two-thirds vote but</p> <p>20 the tradition in Texas Senate was, before the new regime</p> <p>21 took over, you would have a two-thirds vote.</p> <p>22 Q. It's a true statement, isn't it, that if there</p> <p>23 was not a blocker bill in place that Senate Bill 14</p> <p>24 would have been the first bill voted on because of the</p> <p>25 regular order of business?</p>

215

1 A. You could make that argument, and my response
2 would be why did he need to adopt the rules from the
3 previous session so that you were doing this by a
4 special order to the rules, a special order being that
5 you would do the voter ID bill by majority vote.
6 Q. But that's a true statement, isn't it?
7 A. I don't know. You would have to ask them. You
8 know what, I just say just from me reading it, from what
9 Senator Fraser did, I guess his knowledge of the rules
10 would be as weak as your question would imply mine would
11 be, why would he adopt the previous rules and call for a
12 special order if his bill was going to be the first bill
13 anyway unless maybe on their side, some of them were
14 having heartburn about what they were doing as well.
15 Q. Okay. But if there was no blocker bill in place,
16 Senate Bill 14 would have been the first bill voted on
17 based on the regular order of business in 2011?
18 A. The tradition is a two-thirds vote. The notion
19 of a blocker bill was just a way to say this is why you
20 have to have two-thirds vote because whoever was
21 carrying the blocker bill -- if it's something like
22 changing the name of Town Lake to Sugar Lake, whoever
23 was carrying that could always move their bill anyway.
24 So, it was just a way of procedurally saying this is how
25 we maintain our tradition.

216

1 Q. Is it a true statement that when bills come up in
2 the Texas Senate in the regular order of business, they
3 do not require a two-thirds majority vote?
4 A. I'm not trying to belabor the point but I think
5 you do get it. I know you're trying to show some point
6 other than what I'm trying to say.
7 The procedure for implementing our tradition of a
8 two-thirds vote is to go put some bill up there, and the
9 person who is carrying that bill has a gentelperson's
10 agreement to never move their bill. That's how you get
11 the tradition.
12 And it's usually something innocuous that is
13 never going to move anyway, changing the name of
14 something, changing the name of the state.
15 So, that person has that bill as the first order
16 of business. So, we can tell our House colleagues or
17 somebody sitting in the gallery this is why you have to
18 suspend the rules to get a two-thirds vote. So, I hope
19 I'm --
20 Q. But my question was if a bill comes up in the
21 regular order of business, it doesn't require a
22 two-thirds vote, correct?
23 A. That's what the rules say.
24 Q. Okay. Now, would it -- you were in the 78th
25 Legislature, right?

217

1 A. What year was that? I remember these by years,
2 not by numbers. When you've been there 22 years -- if
3 you ask me how many terms have I been in, I don't count
4 those either.
5 Q. Okay. We can do the arithmetic on that.
6 MR. DUNN: 2003.
7 Q. (BY MR. SWEETEN) So, would it surprise you if in
8 2003 in the 78th Legislature if there were 12 bills that
9 were passed without a two-thirds majority based upon the
10 regular order of business?
11 A. It depends on what the bills are. Do you want to
12 show me what the list of what the bills are?
13 Q. Well, I'm just asking you. The question is would
14 that surprise you?
15 A. It would not surprise me if under the current
16 regime, my colleagues in the Senate, who have had havoc
17 because of pressure from their powers in their party, if
18 there has been a pattern of occasional disregard of
19 Senate traditions as a way of trying to solidify their
20 base to pass things that they want to pass.
21 It would not surprise me if in 2003, as a way of
22 trying to get to redistricting -- normally you do
23 redistricting in the '01 session or in the 1991 session,
24 1981. It wouldn't surprise me if from the beginning
25 with 31 members, most of whom had families, jobs,

218

1 everything else, would pack up and go to Austin for 600
2 a month for 140 days, where the tradition had been you
3 look out for one another in this process and you obey
4 the traditions, if there was a pattern to prepare for
5 trying to do redistricting again in the middle of the
6 decade, if they didn't resort to all kinds of subterfuge
7 to try to make the case to do redistricting in 2003.
8 In my judgment, that was one of my lowest points in the
9 history of the Senate.
10 Q. Okay. Would it surprise you to know that under
11 Lieutenant Governor Bullock that in the 72nd
12 Legislature, 1992, that two bills were passed based
13 upon -- without a two-thirds majority based upon
14 adherence to the regular order of business?
15 A. It's certainly possible. It would surprise me if
16 it happened and anybody was concerned about it. I would
17 assume that they were bills where people who were
18 opposed to them had a gentelperson's agreement with the
19 leadership that they wanted them to pass, just get them
20 out of here.
21 Q. Would you agree it's a fairly common thing for --
22 based upon adherence to the regular order of business,
23 for Senate bills to be passed without a two-thirds
24 majority?
25 A. I think it's fairly uncommon unless it's an

219

1 insignificant bill.
 2 Q. As you're sitting here, do you know historically
 3 how many times the Senate has passed -- within the last
 4 50 years, how many times the Senate has passed
 5 legislation based upon adherence to the regular order of
 6 business without a two-thirds majority?
 7 A. I don't know. I've looked at a report that the
 8 Secretary of State did.
 9 Q. Yesterday when we were discussing your testimony,
 10 you made reference to a poll tax. Do you believe Senate
 11 Bill 14 is comparable to a poll tax?
 12 A. I do.
 13 Q. Okay. You would agree with me, wouldn't you,
 14 that a poll tax required -- historically required every
 15 person who was casting a ballot to pay in order to cast
 16 a ballot, correct?
 17 A. Yes.
 18 Q. Okay. Now, you would also agree with me,
 19 wouldn't you, that there's no requirement in Senate Bill
 20 14 that all citizens casting a ballot must pay to do so,
 21 correct?
 22 A. That's correct.
 23 Q. You would agree with me that the vast majority of
 24 Texans voting, of all racial make-ups, possess a
 25 driver's license that would be acceptable under Senate

220

1 Bill 14?
 2 A. No.
 3 Q. You don't agree that the vast majority of the
 4 voting public within the State of Texas has a driver's
 5 license available to them?
 6 A. I think that there are people who are eligible to
 7 vote -- I don't know the numbers but I think there are
 8 people who are eligible to vote who have gotten their
 9 licenses suspended. And I made reference to the press
 10 accounts from El Paso County, as an example, where a
 11 large number of people have gotten their licenses
 12 suspended because they owe fines but they would be
 13 eligible to vote but cannot vote because they don't have
 14 a license.
 15 Q. My question, though, is this: Do you believe
 16 that the majority of Texans who are registered to vote
 17 have a driver's license?
 18 A. It might -- I don't know the number. It would be
 19 at least -- I don't know if it's a majority but I would
 20 say a plurality of those who are voting have a driver's
 21 license.
 22 Q. And you would agree, wouldn't you, that Senate
 23 Bill 14, if you have a driver's license, that that is
 24 acceptable identification to vote under the bill?
 25 A. Yeah, I do.

221

1 Q. So, clearly, those with a driver's license that
 2 vote don't pay anything to vote and certainly your
 3 analogy to a poll tax is inappropriate with respect to
 4 those in possession of a driver's license, wouldn't you
 5 agree with that?
 6 A. No, I don't agree with that. I think that --
 7 Q. How is that not so?
 8 A. Are you finished?
 9 Q. Yes.
 10 A. I think the 12 percent of the people who voted in
 11 my last election had -- most of those a driver's license
 12 but I think that it's comparable to a poll tax in this
 13 sense, you have to have a car or money to get mass
 14 transportation or some resources to get to wherever it
 15 is they have to go get a driver's license. They can't
 16 do what legislators can do. We have a private room over
 17 there. When our licenses are expired, we go over there
 18 and we don't wait in line.
 19 But the people that I represent, particularly the
 20 poor ones, they have to have some resources to get to
 21 the place, to get in the line. They have to have some
 22 time.
 23 So, in my mind, in that sense, yeah, it's
 24 comparable to a poll tax if you put in a requirement
 25 that everybody who votes has to have a driver's license

222

1 because if you don't have a car, you don't really have a
 2 need to get a driver's license.
 3 I represent a lot of people who catch the bus.
 4 Most of them get the early bus, might I add, to go to
 5 work. They are cleaning these buildings in downtown
 6 Houston, or they are riding a bicycle or they are
 7 walking or they are hitchhiking. So, they don't really
 8 have a reason to get a driver's license.
 9 Q. Senator Ellis, you're answering another question
 10 than the one I asked.
 11 The question I'm asking is you've already
 12 testified that you believe a plurality of people in the
 13 State of Texas who are registered to vote have a
 14 driver's license. The question I'm asking you is those
 15 in possession of a driver's license need not under
 16 Senate Bill 14 do anything more than show that driver's
 17 license when they show up to the polls; is that correct?
 18 A. That's correct. My reference was to those who
 19 don't have a driver's license.
 20 Q. Okay.
 21 A. So, that's the analogy to the poll tax.
 22 Q. So, you would agree with me, wouldn't you, that
 23 your suggestion and your analogy to a poll tax is
 24 completely inappropriate --
 25 A. No, not at all.

223

1 Q. I'm not finished.

2 A. Sorry.

3 Q. -- with respect to those -- with the plurality of
4 people in the State of Texas who possess a driver's
5 license, as to that group, that's an inappropriate
6 analogy, correct?

7 A. Are you finished?

8 Q. I am.

9 A. My analogy to a poll tax was appropriate because
10 I was making reference to those people in my district
11 who may not have a driver's license because they don't
12 have a car because they catch the bus or they catch a
13 ride or they walk to work.

14 So, if you don't have the resources to have a car
15 or if you are elderly and your driver's license has been
16 taken away from you, you have no reason to go get one.

17 Q. Okay.

18 A. And then you have to -- can I finish?

19 Q. Go ahead. You can finish.

20 A. Then you have to figure out where is the DPS
21 office that you don't go to on a regular basis, you
22 don't have a car, you don't plan on buying a car, you
23 have no reason to go get a driver's license, you're not
24 flying on an airplane, you don't need a passport, you're
25 not going out of the country, you know, you're poor or

225

1 not referring to the plurality of Texans who have a
2 driver's license, correct?

3 A. That's fair.

4 Q. So, with respect to that, the individuals who
5 either do not have a driver's license or who have a
6 suspended driver's license that you're referring to,
7 those individuals are able, under the provisions of
8 Senate Bill 14, to obtain a free identification from the
9 Department of Public Safety, and that's provided for in
10 Senate Bill 14, correct?

11 A. That's what the bill says.

12 Q. Okay.

13 A. That may not be reality but that's what the bill
14 says.

15 Q. The bill, by its own terms, provides for free
16 identification to be issued from the DPS for any
17 individual that asks for one, correct?

18 A. The 14th Amendment provides for equal protection
19 under the law but the enforcement of that historically
20 has been a challenge.

21 The Texas constitution has some language to that
22 effect but the implementation of that -- the devil is
23 always in the details. The challenge for people whose
24 license has been suspended is knowing where to go to get
25 this government issued ID in an environment where they

224

1 you are on disability or something or Social Security,
2 you served in the war and you retired, you don't
3 necessarily -- you may not be homeless, you just may be
4 renting or staying with someone, you have no reason to
5 go get a driver's license, to go through the hassle of
6 waiting in a line or doing the paperwork or practicing
7 for an exam because you don't have a car.

8 Q. Okay.

9 A. But you do have a constitutional right to vote.
10 And if the State puts in a restriction that says you
11 have to have a government issued photo ID, you don't
12 have a gun license because you don't have a gun, then I
13 think the analogy to a poll tax is entirely appropriate.

14 Q. Okay. Then let's be precise about it. When
15 you're making an analogy to a poll tax, you are not
16 including those residents in the State of Texas who
17 possess a driver's license, you are referring to those
18 who do not?

19 A. I'm referring to those who do not have a driver's
20 license and I'm referring to those who do have a
21 driver's license but their driver's license has expired
22 or it has been taken away from them because they don't
23 meet other requirements.

24 Q. And it's those individuals you're referring to
25 where you are making the analogy to a poll tax, you're

226

1 feel comfortable.

2 And as I've stated for the record, in my
3 judgment, if someone's license has been suspended, it
4 wouldn't be the wisest thing in the world to go to a DPS
5 office and pass the officer, who you assume has the
6 ability to arrest you because you haven't paid your
7 fines, and say, "I'd like to get a government issued
8 ID."

9 Those offices are open, I assume, until
10 5:00 o'clock, 6:00 o'clock. Working class people would
11 have to go after hours, and the challenge for working
12 class people would be how do you get there.

13 And the lines -- at least from complaints I've
14 gotten about driver's license -- I don't think many
15 people know about this going to pick up a government
16 issued ID to vote but to get a driver's license, I get a
17 large number of complaints from people about the lines.

18 Q. Are you -- by the way, do you have any
19 information about the educational efforts by the
20 Secretary of State in the event Senate Bill 14 is
21 implemented? Do you know what those programs would
22 entail?

23 A. No.

24 Q. Okay.

25 A. It hasn't gone into effect yet. I know that here

227

1 in Harris County, the voter registrar was doing
2 training, telling election officers that people would
3 have to have ID, and he didn't know that that was not
4 the law.

5 And I contacted the Secretary of State's Office
6 and said, "Would you please let him know that is not the
7 law."

8 So, that indicates to me the plan must be pretty
9 weak in the event the law goes into effect since it was
10 pretty weak before the law went into effect.

11 Q. Are you aware of any additional legislative
12 programs related to DPS to increase funding for the
13 agency?

14 A. I don't know any details. I know that because of
15 the latest -- I know letters went out recently asking
16 the state agencies to do another round of budget cuts,
17 and it would be hard for me to believe that with another
18 record surplus, all the other challenges in terms of
19 issues for state government, that the administration
20 would make it a priority to help get photo IDs to people
21 to vote when classrooms are bulging from classes that
22 have asked for a waiver to the classroom size.

23 Q. Are you aware currently of specific legislation
24 related to increasing funding of DPS?

25 A. I have some limited knowledge of it but I'd

229

1 follow-up letter to the Justice Department, and that's
2 what I was thinking about that would have some data in
3 it for you.

4 Q. So, you sent a correspondence to the Justice
5 Department with -- and in your letter, you reference
6 some data?

7 A. I think so. Every time I have seen anything in
8 the press that I thought it would be good to consider --
9 since I did ask the Justice Department to weigh in on
10 this issue, every time I think about something, I would
11 send it up. So, I think I've written them at least
12 twice.

13 Q. What data did you send?

14 A. I don't know.

15 Q. It was from a public press report, though?

16 A. Yeah, I saw something in the newspaper and that's
17 what triggered -- it may have been something I saw in
18 the paper making reference to somebody's study, and I
19 probably clipped it out or forwarded it in an E-mail and
20 said, "Send another letter to Justice and make sure they
21 are aware of this."

22 Q. Okay. And your letter, can you tell me
23 approximately the time frame as to when you sent that?

24 A. You know, it's just like whether it's the 62nd or
25 the 72nd Legislature --

228

1 suggest to you, you better hold your breath -- don't
2 hold your breath waiting for it to happen.

3 Q. Okay. So, as to the specifics of that funding,
4 do you have any information about that?

5 A. No. I'm not Finance Chair any more. I had a
6 better pulse of that when I had the pen in my hand.

7 Q. Yesterday you testified that you had some data
8 that you were relying upon regarding what you felt
9 showed discriminatory effect of Senate Bill 14, and
10 remember you asked one of your legislative staffers to
11 go look for that. Was he able to locate that for you?

12 A. No.

13 Q. Okay.

14 A. But we can get it to you.

15 Q. Okay.

16 A. I suggest -- that was a letter that I sent, and
17 that letter that we make reference to in here that I
18 sent to DOJ, that's really what I was thinking about, to
19 see to what extent -- but I assume on Monday, we can get
20 you a copy of that.

21 Q. Okay.

22 A. I think we make reference to it in here
23 somewhere, and that's what I was thinking about. I
24 don't see it in here but I'm thinking of a letter -- I
25 can remember seeing something in the paper and doing a

230

1 Q. But it's been within this year?

2 A. Within the last year. I don't know. It's been
3 since this issue has been around. Could have been --
4 look, I've been sending stuff -- I mean, the DOJ,
5 they've been hearing from me since this issue started.
6 I don't know if I sent anything in 2005 since they
7 didn't even hear it in the Senate committee.

8 Q. Is there any other data that you've -- and we've
9 talked about the lack of data. Is there any additional
10 data other than that correspondence that you indicate
11 where you reference data that you're aware of related to
12 the number of individuals who will be impacted by Senate
13 Bill 14 that you haven't discussed?

14 A. I'd just add to the laundry list, you just google
15 in disparate impact of voter ID bills, and you'll see
16 the South Carolina study, and I think somebody has done
17 something in Georgia now, when the issue was working its
18 way through the process, litigated.

19 Q. And you haven't analyzed those studies?

20 A. No.

21 Q. As far as your opinion about those studies,
22 you're not able to offer an opinion with respect to
23 those one way or the other?

24 A. The Brennan Center I did look at fairly closely
25 some time ago, and that's a group that I work with. So,

<p style="text-align: center;">231</p> <p>1 I'm familiar with them, and I think that one is a good</p> <p>2 one to look at but there are a number of them out there</p> <p>3 I wouldn't profess to be an expert on them. If I had to</p> <p>4 debate this bill, I would become an expert on them at</p> <p>5 least for that day.</p> <p>6 Q. Okay.</p> <p>7 A. And I could have my notes. I like to be --</p> <p>8 sharp, young fellow like you, I try to be accurate on</p> <p>9 stuff, so, I like to have my notes but you don't want me</p> <p>10 to have any notes here.</p> <p>11 Q. Actually, that isn't the case. What I said is if</p> <p>12 you are going to testify off notes, that I would have</p> <p>13 the ability to review those.</p> <p>14 A. Can I get my iPad?</p> <p>15 Q. Hold on a minute. Your attorney and I discussed</p> <p>16 this. And at that point, you indicated you're not going</p> <p>17 to utilize notes. So, if that's the case, then I don't</p> <p>18 have to review them. If you're going to refer to notes,</p> <p>19 I do get an opportunity to look at them.</p> <p>20 MR. DUNN: Our position is if the notes are</p> <p>21 prepared by an attorney, you don't get a copy of them</p> <p>22 but, nevertheless, use all the time you need, we want</p> <p>23 you to get all your questions answered but most of what</p> <p>24 we've done in the last hour we've already talked about.</p> <p>25 So, do we have new areas of inquiry?</p>	<p style="text-align: center;">233</p> <p>1 court so I can make sure I'm prepared? I was told I</p> <p>2 would have about 15 minutes. With a distinguished panel</p> <p>3 like this one, I would like to go in there and talk to</p> <p>4 them for a couple of hours if you all will permit me, in</p> <p>5 which case, I'll bring my documents.</p> <p>6 Q. Senator, I have no doubt that you could talk for</p> <p>7 a couple of hours but let me -- and I'm getting towards</p> <p>8 the end. I hope you understand that was in jest.</p> <p>9 THE WITNESS: Is my breakfast out there?</p> <p>10 MR. SWEETEN: Let's take a break and let you</p> <p>11 have that. And I've got about maybe 15 or 20 minutes.</p> <p>12 (Short recess.)</p> <p>13 Q. (BY MR. SWEETEN) Now, there's a question I had</p> <p>14 asked you earlier about the members of your household,</p> <p>15 and there was one question I needed to ask about each of</p> <p>16 those. You and your wife are registered to vote,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. The -- and you've listed the other individuals</p> <p>20 that live in your household. Those that are over 18 are</p> <p>21 all registered to vote; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now, yesterday I asked you to name any individual</p> <p>24 who doesn't have an ID that's required by Senate Bill</p> <p>25 14 -- that doesn't have a -- let me start over.</p>
<p style="text-align: center;">232</p> <p>1 A. I want to work with you. I'd be more than happy</p> <p>2 to --</p> <p>3 Q. (BY MR. SWEETEN) Why don't you just give me a</p> <p>4 copy of your notes then.</p> <p>5 A. If you've got your iPad, I'll just google in</p> <p>6 disparate impact of voter ID laws. And for the record,</p> <p>7 she can put all those in, on both sides. She can take</p> <p>8 all those studies on both sides.</p> <p>9 Q. And what I want to know is about what you have to</p> <p>10 testify to, not about what's on google. I can certainly</p> <p>11 do that myself.</p> <p>12 But my question is as far as doing an analysis of</p> <p>13 those studies that exist in the public domain, that's</p> <p>14 not something that you've done or you're testifying</p> <p>15 about here, correct?</p> <p>16 MR. DUNN: He just wants to know are you</p> <p>17 going to show up at trial and analyze a bunch of studies</p> <p>18 and reports?</p> <p>19 A. How much time are you all going to give me at</p> <p>20 trial?</p> <p>21 Q. (BY MR. SWEETEN) You haven't done that today,</p> <p>22 though?</p> <p>23 A. No. I spent about 23 minutes on it last night.</p> <p>24 Q. Okay.</p> <p>25 A. How much time are you guys going to give me in</p>	<p style="text-align: center;">234</p> <p>1 I asked you to list the name of one person who is</p> <p>2 registered to vote and doesn't have an ID required by</p> <p>3 Senate Bill 14 to vote. Can you tell me the name of</p> <p>4 anyone as you're sitting here who fits that description?</p> <p>5 A. No. I can only tell you the names of -- I can</p> <p>6 only tell you the names of people who are registered to</p> <p>7 vote, and there are very few of those whose names I</p> <p>8 know. That's a common trait for those of us in</p> <p>9 politics. We tend to know the ones who vote for us and</p> <p>10 against us.</p> <p>11 Ones who are not registered to vote, even if they</p> <p>12 have a driver's license, I wouldn't know them. I think</p> <p>13 that's common for most of my colleagues as well.</p> <p>14 Q. You've had constituents, haven't you, Senator,</p> <p>15 that have told you they support a photo identification</p> <p>16 requirement?</p> <p>17 A. I've had very few but I've had some who told me</p> <p>18 they support it, and I've had some who told me they</p> <p>19 don't, you know.</p> <p>20 Q. Would you agree that it's politically rational</p> <p>21 for a Senator or Representative to vote for or advocate</p> <p>22 legislation that their constituents support?</p> <p>23 A. No.</p> <p>24 Q. Okay. You don't think that's politically</p> <p>25 rational?</p>

235

1 A. No. And I don't think they do it on a regular
2 basis. And I'll give you examples. I carry legislation
3 for a statewide ban on smoking in public places. I've
4 shown my colleagues data where their constituents
5 support that, and they don't vote for it, or giving the
6 voters an opportunity to vote on casino gambling.
7 It may shock you but it's fairly common for
8 members not to vote on the basis of some news account or
9 some poll that somebody gives them.
10 Now, if they do their own poll where they will
11 ask the question in such a way that they take in all of
12 the ramifications and stuff that may blow up on them --
13 as an example, most of my colleagues know that polling
14 data indicates that the public is very upset about the
15 cuts we made to education, very upset about the alarming
16 increase in classrooms. I can show you polling data on
17 that but they're not going to go vote to not cut public
18 education because in order to do that, there are other
19 things you have to do.
20 So, I'm just saying that most people who have
21 lasted as long as I have in politics are not just voting
22 on the basis of polling data that somebody gives them
23 because whoever is doing the polling generally asks the
24 question to get the answer that they want to get.
25 Q. Once Senate Bill 14 passed the Senate, it went

236

1 over to the House for consideration, do you have any
2 personal knowledge as to the House proceedings that
3 occurred with respect to Senate Bill 14?
4 A. Not really.
5 Q. You don't have an opinion one way or the other
6 about the procedures employed by the House, correct, in
7 their consideration of Senate Bill 14?
8 A. The House has always been a mystery to me.
9 Q. Okay. And I'll take it then that you don't have
10 an opinion one way or the other about the procedures
11 that the House members utilized to consider Senate Bill
12 14?
13 A. No.
14 Q. Okay. You didn't follow the committee
15 proceedings in the House?
16 A. I only follow the proceedings in the House on my
17 own bills.
18 Q. And it's not something that you could testify
19 about one way or the other, correct?
20 A. No, sir.
21 Q. Okay. Now, I you asked yesterday about which
22 Senators you believed voted for Senate Bill 14 in order
23 to purposefully discriminate. I'm going to ask the same
24 question about House members. And given the fact that
25 initially you've already indicated that you didn't --

237

1 you're not aware of the House proceedings, I'm just
2 going to ask you of the House members who voted for
3 Senate Bill 14, do you have an opinion one way or the
4 other about which House members voted for Senate Bill 14
5 in order to purposefully discriminate against racial
6 minorities?
7 A. I do.
8 Q. Okay. What is that opinion, sir?
9 A. My opinion is that the bill has discriminatory
10 intent, that most of them who voted for it knew it or
11 should have known it because there was ample evidence
12 that there was the possibility that the bill would have
13 a disparate impact on African Americans and Hispanics.
14 They work with their colleagues in the House.
15 It's a bigger club but there are 150 people. We may
16 have philosophical differences but we know one another.
17 And I don't think they would have believed -- the vast
18 majority -- virtually all of the members who represented
19 those minorities constituents would have raised the
20 level of angst and concern if they didn't believe it,
21 which would lead a reasonable person to think there's at
22 least a distinct possibility that this bill would have a
23 disparate impact on certain groups of people. That
24 leads me to believe that they knew what they were doing,
25 intended to do it, and the fact that they were being

238

1 pushed by their party to vote for it and, if not, there
2 would be consequences in the next election.
3 So, they -- I think they knew that it had
4 discriminatory intent, they felt like they had to do it,
5 and they did it.
6 Q. So, is it your testimony that every House member
7 and every Senator that voted for Senate Bill 14 either
8 knew that it had a discriminatory effect or should have
9 known that it would have a discriminatory effect?
10 A. That's correct.
11 Q. And you don't know as you're sitting here -- do
12 you have an opinion one way or the other which fall into
13 either camp, the knew or should have known camp?
14 A. I have my -- I could speculate on it but I would
15 decline to do that.
16 Q. That would be speculation for you to do that,
17 right?
18 A. It's all my opinion.
19 Q. And you have seen no data that indicates the
20 number of individuals who do not possess identification
21 under Senate Bill 14, correct?
22 A. No, that's not correct.
23 Q. Okay. What data have you seen? How many Texans
24 don't have the requisite photo identification under
25 Senate Bill 14, in your opinion?

239

1 A. I don't have the data in front of me but I saw
 2 reports. So, I'm just guessing it might have been 10,
 3 15, 19 percent, somewhere under 20 percent, but I saw
 4 data or surveys from other states that you could apply
 5 to Texas.
 6 Q. Okay. So, any data you're referring to would
 7 have been from other states, correct? I'm asking about
 8 Texas. Do you know as you're sitting here or have you
 9 seen any data of any sort that quantifies the number of
 10 individuals within the State of Texas who do not possess
 11 ID that would be acceptable under Senate Bill 14?
 12 A. As I'm sitting here today, I couldn't cite it
 13 specifically. I would have to go back and check my
 14 records, check the record of what was said on the floor,
 15 ask my staff and people I call. I can remember calling
 16 my political consultant, as an example, and saying,
 17 "Hey, have you got any idea in my district, you know,
 18 what impact this would have?"
 19 And I just cannot remember, sitting here today,
 20 the numbers but, I mean, I was told, "Yeah, it's going
 21 to have a disparate impact on the folks in your district
 22 that it's going to impact."
 23 Q. Who told you that?
 24 A. Well, Dan McClung, my political consultant.
 25 (Off the record.)

240

1 A. Dan McClung, my political consultant. I called
 2 up -- I made a lot of calls. I called somebody with
 3 Labor. I'm sure I called somebody over at the
 4 Democratic party. I was trying to get numbers on my
 5 district, and I called -- I asked -- if it was not Eliot
 6 Shapleigh, I called somebody from El Paso.
 7 Q. (BY MR. SWEETEN) Remember, don't reveal
 8 legislative privilege. Shapleigh, is that the Senator?
 9 A. Yeah. So, I made calls to a Senator to ask if
 10 there were any -- if there was any data from a
 11 particular district because of the newspaper account I
 12 saw about people whose licenses had been suspended. And
 13 I didn't know if the newspaper -- I can't remember who
 14 did the study but it just struck me that this one
 15 particular county -- it just seemed like a very high
 16 number of people whose licenses had been suspended. So,
 17 I asked the question, "Anything you have that I can use
 18 in this debate?"
 19 Q. And did you receive such data?
 20 A. I don't remember.
 21 Q. Okay.
 22 A. It was so quick. If so, I would have put it in
 23 the record. So, I assume I just used the press account.
 24 Q. Is there any data that you can cite right now
 25 about -- let's start with your district -- that would

241

1 show how many individuals in your district do not
 2 possess satisfactory photo identification as provided
 3 for under Senate Bill 14?
 4 A. I have asked but my staff has not been able to
 5 get it. So, I assume that it does not exist.
 6 Q. Okay.
 7 A. I have asked DPS, and I have asked the Secretary
 8 of State. I assume it's a difficult thing to quantify.
 9 Q. And the same question statewide, you don't
 10 know -- specifically as you're sitting here, you have
 11 not seen data that indicates what percentage of the
 12 population in the State of Texas does not possess an ID
 13 that would be sufficient to qualify under Senate Bill
 14 14?
 15 A. I have not but I have asked, and that's also why
 16 I have asked for the amendment to be added to the bill
 17 and made my nice conciliatory comments to Senator Frase
 18 that you wanted to take out of context, hoping I would
 19 get him to vote for it.
 20 Q. That you -- okay. Never mind.
 21 A. My gratuitous comments that we were going back
 22 and forth about the other day when I told you I lied,
 23 and you said, "Where else have you lied?"
 24 I meant to respond by saying, "You ought to ask
 25 my colleagues where else have they lied," but that would

242

1 have been ugly if I had said that.
 2 Q. Any other things on the floor of the Senate that
 3 you lied about other than that?
 4 A. No. I can assure you that lying is not a normal
 5 part of my deal.
 6 Q. Okay. Well, we're getting towards the end.
 7 A. I don't believe it.
 8 Q. Let me check your affidavit again. On paragraph
 9 17 you say, "I, therefore, believe that the proponents
 10 of Senate Bill 14 knew that the people most likely not
 11 to possess the required photo identification are brown
 12 and black."
 13 Now, there's not any specific data that you've
 14 ever seen that indicates what percentage affected by
 15 Senate Bill 14 are racial minorities, correct?
 16 A. Repeat that question.
 17 MR. SWEETEN: Can you read it back?
 18 (Whereupon, the requested testimony was read back
 19 as follows:
 20 QUESTION: Now, there's not any specific data
 21 that you've ever seen that indicates what
 22 percentage affected by Senate Bill 14 are racial
 23 minorities, correct?)
 24 A. I've not seen any data that gives me specific
 25 numbers but I've seen data that indicates that most of

243

1 the people who would fall in that category are
 2 minorities.
 3 Q. (BY MR. SWEETEN) Okay. That's your -- that's
 4 your opinion based upon your 22 years as a Senator and
 5 your life experience, correct?
 6 A. The data or the comment?
 7 Q. No. Your opinion that this will
 8 disproportionately impact racial minorities, that's your
 9 opinion, right?
 10 A. That's my opinion based on talking to people who
 11 conduct elections on a regular basis, do campaigns on a
 12 regular basis.
 13 Q. But there's not data that you can say that you've
 14 ever seen that supports that position from within the
 15 State of Texas?
 16 A. Not within the State of Texas.
 17 Q. Okay. And --
 18 A. It's not been collected, to my knowledge.
 19 Q. Is it your opinion also that Senate Bill 14 will
 20 impact, for example, Asian voters disproportionately?
 21 Do you hold that opinion, sir?
 22 A. You know, I don't know.
 23 Q. Okay.
 24 A. I have a sizeable Asian American population but
 25 I've not done a detailed analysis on that voting

244

1 pattern. It's not a high voting community within my
 2 district.
 3 Q. Okay. Do you have an opinion as to the American
 4 Indian population, as to whether this bill would
 5 disproportionately impact them?
 6 A. I'm just guessing but I'm assuming they have a
 7 large number of people who may not have a driver's
 8 license. I've been on a couple of Native American
 9 reservations in East Texas but I don't have a large
 10 Native American population in my district. So, I don't
 11 know if they have some tribal form of government issued
 12 ID or not but I'm just assuming that -- reservations
 13 that I have been to, I didn't see a lot of automobiles.
 14 Q. But that would be just guessing, as you said?
 15 A. Guessing, yeah.
 16 Q. Okay. Well, Senator, we have -- over
 17 approximately five hours, we've had a discussion
 18 regarding the issues of Senate Bill 14 and your
 19 testimony. Is there anything at this point that you
 20 wish to change with respect to your answers that you've
 21 provided over the course of the deposition?
 22 A. Upon reflection, I would say that on my
 23 affidavit, that I did talk with the DOJ on putting it
 24 together, as well as my staff. You know, I proof most
 25 things that I sign and, as much as I can, make sure that

245

1 one is using my words. So, when you asked the question
 2 yesterday about that, I want to make sure I'm clear that
 3 I did, on filing this affidavit, work with the DOJ on
 4 filing the affidavit.
 5 Q. So, let's talk about that issue. The Department
 6 of Justice worked with you on the production of that
 7 affidavit, correct?
 8 A. Uh-huh.
 9 Q. Is that yes?
 10 A. Yes.
 11 Q. And the Department of Justice helped you write
 12 it?
 13 A. I'll put it the other way. I think that I gave
 14 the Department of Justice some guidance, as well as my
 15 staff, on which parts I thought ought to be included
 16 based on what I said in the record.
 17 Q. And the Department of Justice, did they draft the
 18 language utilized in your affidavit?
 19 A. I think it's a combination of what I said, what
 20 my staff said, what DOJ pulled out of the record saying
 21 that I said to me and me adding my input into what I
 22 thought --
 23 Q. Okay.
 24 A. -- and what reflected my thoughts.
 25 Q. Who put in here, for example, in 3, "In 2005,

246

1 Representative Mary Denny, who is white" -- who put "who
 2 is white" in there?
 3 A. You know, I don't know.
 4 Q. Could have been DOJ?
 5 A. Could have been DOJ. Could have been me. I'm
 6 pretty sure that I put in there on the first one that
 7 I'm African American.
 8 Q. Okay. Who put in paragraph 4, "In 2007,
 9 Representative Betty Brown, who is white," who put that
 10 in there?
 11 A. I don't know whether it was my staff, me or DOJ
 12 but I know I clearly wanted to let the Court get a sense
 13 of the racial and ethnic background of the players in
 14 the process.
 15 Q. But you don't know one way or the other who
 16 suggested that language?
 17 A. No.
 18 Q. Could have been DOJ?
 19 A. Could have been.
 20 Q. How many drafts were sent back and forth between
 21 you and DOJ?
 22 A. You know, I have no earthly idea.
 23 Q. Did the Department of Justice suggest changes to
 24 you?
 25 A. I have no earthly idea.

<p style="text-align: center;">247</p> <p>1 Q. Was the actual document drafted by the Department</p> <p>2 of Justice in final form?</p> <p>3 A. I don't think so. I'm sure that they made sure</p> <p>4 that the page numbers were correct on it.</p> <p>5 Q. And they made sure that the -- that what you said</p> <p>6 is what they wanted to put in?</p> <p>7 A. No. I think that -- you know, as you can tell</p> <p>8 from the five hours you've spent with me, I tend to be a</p> <p>9 little colorful and, you know, I'm pretty sure that I</p> <p>10 can remember either saying to -- on a call with either</p> <p>11 my staff or with DOJ, my line about most people -- if</p> <p>12 you did a poll, most people supported the poll tax when</p> <p>13 it came about.</p> <p>14 Q. Okay.</p> <p>15 A. I think that's a pretty good analogy in my</p> <p>16 response to Senator Fraser, and I clearly remember</p> <p>17 adding that. So, when I'm in the process of drafting</p> <p>18 affidavits, as I'm sure when my colleagues on the other</p> <p>19 side were talking to you on drafting their affidavits,</p> <p>20 if they drafted any, you know, memory fades as to who</p> <p>21 suggested what, as long as it's an adequate reflection</p> <p>22 of the record.</p> <p>23 Q. Are there any changes you would make to this</p> <p>24 affidavit at this time?</p> <p>25 A. Yeah. I'd just have to think about it. Can I --</p>	<p style="text-align: center;">249</p> <p>1 and -- unless DOJ has questions, which may require me to</p> <p>2 ask you additional questions, I will reserve further</p> <p>3 questions until the time of trial.</p> <p>4 MR. DUNN: Jennifer, are you still with us?</p> <p>5 MS. MARANZANO: I am still with you.</p> <p>6 I don't have questions at this time.</p> <p>7 MR. DUNN: And we'll reserve for trial.</p> <p>8 (Whereupon at 10:38 a.m. the</p> <p>9 deposition was concluded.)</p>
<p style="text-align: center;">248</p> <p>1 I was looking over it last night. I'd like to --</p> <p>2 Q. Is there anything that's inaccurate in the</p> <p>3 affidavit?</p> <p>4 A. Nothing that just hits me.</p> <p>5 Q. How long did you and DOJ spend putting this</p> <p>6 affidavit together?</p> <p>7 A. I would have no earthly idea. It would be like</p> <p>8 if you asked me next week how much time I spent with a</p> <p>9 fine lawyer like you, I would just probably say too much</p> <p>10 but I wouldn't be able to quantify how much.</p> <p>11 Q. As long as she got the part about fine lawyer,</p> <p>12 we'll take it.</p> <p>13 Senator, have I been -- I've asked you questions</p> <p>14 over the course of this deposition. Have I been polite</p> <p>15 to you?</p> <p>16 A. You've been a delight to be with. You've got a</p> <p>17 job to do, and I respect that. Pleasure to get to know</p> <p>18 you.</p> <p>19 Q. You as well.</p> <p>20 And have you understood the questions that I've</p> <p>21 asked you, and if you haven't, have you asked me to</p> <p>22 clarify?</p> <p>23 A. I think so.</p> <p>24 Q. Okay. All right. Okay.</p> <p>25 MR. SWEETEN: With that, I'll go ahead</p>	<p style="text-align: center;">250</p> <p>1 ERRATA SHEET</p> <p>2</p> <p>3 Correction Page Line</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: center;">1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS,) Plaintiff,) VS.) CASE NO. 1:12-CV-00128 (RMC-DST-RLW) ERIC H. HOLDER, JR., in his) Three-Judge Court official capacity as Attorney) General of the United States,) Defendant.) ERIC KENNIE, et al.,) Defendant-Intervenors,) TEXAS STATE CONFERENCE OF) NAACP BRANCHES, et al.,) Defendant-Intervenors,) TEXAS LEAGUE OF YOUNG VOTERS) EDUCATION FUND, et al.,) Defendant-Intervenors,) TEXAS LEGISLATIVE BLACK) CAUCUS, et al.,) Defendant-Intervenors,) VICTORIA RODRIGUEZ, et al.,) Defendant-Intervenors.) ----- ORAL DEPOSITION OF TREY MARTINEZ FISCHER JUNE 15, 2012 ----- ORAL DEPOSITION of TREY MARTINEZ FISCHER, produced</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 2 3 FOR THE PLAINTIFF: 4 ADAM ASTON 5 Assistant Attorney General 6 ATTORNEY GENERAL OF TEXAS 7 P.O. Box 12548 8 Austin, Texas 78711 9 Tel: (512) 936-0596 10 Email: Adam.aston@oag.state.tx.us 11 12 FOR THE DEFENDANT: 13 MICHELLE A. McLEOD 14 Trial Attorneys 15 U.S. DEPARTMENT OF JUSTICE 16 950 Pennsylvania Avenue, NW 17 Room 7254 NWB 18 Washington, DC 20005 19 Tel: (202) 305-0115 20 Email: Michelle.mcleod@usdoj.gov 21 FOR THE DEFENDANT-INTERVENOR: TEXAS STATE CONFERENCE OF 22 NAACP BRANCHES and MEXICAN-AMERICAN LEGISLATIVE CAUCUS 23 24 JOSE GARZA 25 LAW OFFICE OF JOSE GARZA 7414 Robin Rest Drive San Antonio, Texas 78209 Tel: (210) 392-2856 Email: Garzapalm@aol.com FOR THE DEFENDANT-INTERVENOR: THE BRENNAN CENTER FOR JUSTICE AT NYU LAW SCHOOL IAN VANDEWALKER (BY Speakerphone) THE BRENNAN CENTER FOR JUSTICE AT NYU LAW SCHOOL 161 Avenue of the Americas, Floor 12 New York, New York 10013 Tel: (646) 292-8362 Email: ian.vandewalker@nyu.edu ALSO PRESENT: Martin Golando</p>																																						
<p style="text-align: center;">2</p> <p>1 as a witness at the instance of the Plaintiff, and duly 2 sworn, was taken in the above-styled and numbered cause 3 on the 15th day of June, 2012, from 10:00 a.m. to 3:43 4 p.m., before Jean Thomas Fraunhofer, CSR in and for the 5 State of Texas, reported by machine shorthand, at REGUS, 6 18756 Stone Oak Parkway, Suite 200, San Antonio, Texas 7 78258, pursuant to the Federal Rules of Civil Procedure 8 and the provisions stated on the record or attached 9 hereto. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <td style="text-align: center;">WITNESS</td> <td style="text-align: center;">PAGE</td> </tr> <tr> <td>TREY MARTINEZ FISCHER</td> <td></td> </tr> <tr> <td>Examination by Mr. Aston</td> <td style="text-align: right;">5</td> </tr> <tr> <td>Examination by Mr. Garza</td> <td style="text-align: right;">186</td> </tr> <tr> <td>Signature and Changes</td> <td style="text-align: right;">192</td> </tr> <tr> <td>Reporter's Certificate</td> <td style="text-align: right;">193</td> </tr> </table> <table border="0"> <tr> <td style="text-align: center;">E X H I B I T S</td> <td style="text-align: center;">PAGE</td> </tr> <tr> <td>NO. DESCRIPTION</td> <td></td> </tr> <tr> <td>Exhibit 1 Waiver List</td> <td style="text-align: right;">12</td> </tr> <tr> <td>Exhibit 2 Notice of Deposition</td> <td style="text-align: right;">17</td> </tr> <tr> <td>Exhibit 3 SB14</td> <td style="text-align: right;">45</td> </tr> <tr> <td>Exhibit 4 Election Code 82.003</td> <td style="text-align: right;">51</td> </tr> <tr> <td>Exhibit 5 House Rules</td> <td style="text-align: right;">72</td> </tr> <tr> <td>Exhibit 6 House Journal</td> <td style="text-align: right;">76</td> </tr> <tr> <td>Exhibit 7 SB1811</td> <td style="text-align: right;">80</td> </tr> <tr> <td>Exhibit 8 SB1811, Amendment 58</td> <td style="text-align: right;">80</td> </tr> <tr> <td>Exhibit 9 Expert Declaration of Daron R. Shaw</td> <td style="text-align: right;">109</td> </tr> <tr> <td>Exhibit 10 House Journal</td> <td style="text-align: right;">145</td> </tr> <tr> <td>Exhibit 11 SB362</td> <td style="text-align: right;">172</td> </tr> </table> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	WITNESS	PAGE	TREY MARTINEZ FISCHER		Examination by Mr. Aston	5	Examination by Mr. Garza	186	Signature and Changes	192	Reporter's Certificate	193	E X H I B I T S	PAGE	NO. DESCRIPTION		Exhibit 1 Waiver List	12	Exhibit 2 Notice of Deposition	17	Exhibit 3 SB14	45	Exhibit 4 Election Code 82.003	51	Exhibit 5 House Rules	72	Exhibit 6 House Journal	76	Exhibit 7 SB1811	80	Exhibit 8 SB1811, Amendment 58	80	Exhibit 9 Expert Declaration of Daron R. Shaw	109	Exhibit 10 House Journal	145	Exhibit 11 SB362	172
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<p style="text-align: center;">5</p> <p>1 TREY MARTINEZ FISCHER,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. ASTON</p> <p>5 Q. Good morning. My name is Adam Aston, and I</p> <p>6 represent the State of Texas, the plaintiff in this</p> <p>7 lawsuit. Please state and spell your full name for the</p> <p>8 record.</p> <p>9 A. Sure. My name is Trey Martinez Fischer.</p> <p>10 That's T-R-E-Y, M-A-R-T-I-N-E-Z, no hyphen, Fischer,</p> <p>11 F-I-S-C-H-E-R.</p> <p>12 Q. Have you ever been deposed before?</p> <p>13 A. I have.</p> <p>14 Q. How many times?</p> <p>15 A. One recently and maybe twice over the last</p> <p>16 10 years, 15 years.</p> <p>17 Q. In what cases did those depositions take place?</p> <p>18 A. I was -- I was deposed in the redistricting</p> <p>19 litigation by the Attorney General's office, and I</p> <p>20 recall being deposed as a plaintiff in a personal injury</p> <p>21 lawsuit, and I want to correct that. That was in the</p> <p>22 late '80s, early 1990s.</p> <p>23 Q. So you are aware of two depositions --</p> <p>24 A. Yes.</p> <p>25 Q. -- that you recall?</p>	<p style="text-align: center;">7</p> <p>1 MR. GARZA: That's right. I'm sorry to</p> <p>2 interrupt then.</p> <p>3 Q. (BY MR. ASTON) That's quite all right. So to</p> <p>4 be clear, in the San Antonio lawsuit, you are</p> <p>5 plaintiffs. In the District of Columbia lawsuit, you</p> <p>6 were an intervenor-defendant?</p> <p>7 A. That's correct.</p> <p>8 Q. You sat for one deposition. Did it apply to</p> <p>9 both cases or do you recall which case it occurred in?</p> <p>10 A. I was deposed in Section II case for</p> <p>11 San Antonio, and I think those materials were made</p> <p>12 available to the DC court. I don't know if they were</p> <p>13 used.</p> <p>14 Q. Are you taking any medication or suffering from</p> <p>15 any illness that would affect your ability to provide</p> <p>16 full and accurate testimony today?</p> <p>17 A. I am taking medication. I don't believe it</p> <p>18 will impact my ability to answer questions.</p> <p>19 Q. Are you aware of anything else that might</p> <p>20 prevent you from fully or accurately answering the</p> <p>21 questions?</p> <p>22 A. No, sir.</p> <p>23 Q. Before we -- Again, I'd like to go over a few</p> <p>24 ground rules, hopefully make this go as quickly and</p> <p>25 smoothly as possible. Please answer audibly so that the</p>
<p style="text-align: center;">6</p> <p>1 A. Yes.</p> <p>2 Q. And the redistricting deposition, when did that</p> <p>3 take place?</p> <p>4 A. That took place sometime in the summer or early</p> <p>5 fall of 2011.</p> <p>6 Q. And it was by the Texas Attorney General's</p> <p>7 office?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Have you been -- Have you been a party to any</p> <p>10 other lawsuits?</p> <p>11 A. I was a -- I was a plaintiff in a landlord and</p> <p>12 tenant action that was in justice court in the -- in</p> <p>13 about 1998, 1999 or so.</p> <p>14 Q. And the redistricting litigation, were you an</p> <p>15 intervenor in that suit?</p> <p>16 A. Yes, sir. We were a plaintiff. I'm sorry.</p> <p>17 I'm sorry. I guess I should --</p> <p>18 MR. GARZA: So in this case we're</p> <p>19 intervenors. In the redistricting case, MALC was the</p> <p>20 plaintiff.</p> <p>21 MR. ASTON: Section II plaintiffs?</p> <p>22 MR. GARZA: Section II constitution.</p> <p>23 THE WITNESS: I thought you were referring</p> <p>24 to the District of Columbia lawsuit where we were an</p> <p>25 intervenor. No, that lawsuit so we were both.</p>	<p style="text-align: center;">8</p> <p>1 court reporter can hear and record your answers.</p> <p>2 Nodding and shaking of the head cannot be recorded; do</p> <p>3 you understand?</p> <p>4 A. I do.</p> <p>5 Q. If you do not understand my question, you</p> <p>6 cannot hear my question or if you'd like for me to slow</p> <p>7 down at any point, please let me know, okay?</p> <p>8 A. Okay.</p> <p>9 Q. Please wait for me to finish asking my</p> <p>10 question, and I'll do my best to let you finish</p> <p>11 answering before I move on to the next question, okay?</p> <p>12 A. Okay.</p> <p>13 Q. Your lawyer may object to questions. Even if</p> <p>14 he objects, you must answer my question unless</p> <p>15 instructed to do otherwise; do you understand?</p> <p>16 A. I do.</p> <p>17 Q. Is MALC represented by counsel today?</p> <p>18 A. Yes.</p> <p>19 Q. Who is MALC's counsel?</p> <p>20 A. Jose Garza.</p> <p>21 Q. Could you spell his name, please, for me?</p> <p>22 A. Jose, J-O-S-E, Garza, G-A-R-Z-A.</p> <p>23 Q. Is MALC represented by any other counsel?</p> <p>24 A. Yes.</p> <p>25 Q. And who's that?</p>

<p style="text-align: center;">21</p> <p>1 regarding voter ID legislation?</p> <p>2 A. In the capacity as to our Texas roles or out of</p> <p>3 state or --</p> <p>4 Q. Just in general the issue of voter</p> <p>5 identification.</p> <p>6 A. I think that MALC has clearly demonstrated its</p> <p>7 interest in legislation that could have a impact on --</p> <p>8 on minority election outcomes, and so this is clearly --</p> <p>9 as MALC is a member driven organization and as it has a</p> <p>10 collection of its members, they all have their</p> <p>11 particular areas of special expertise. We have a couple</p> <p>12 of members who are well versed in election law, voter</p> <p>13 identification law. We have members who sat on the</p> <p>14 select committee for this voter identification bill that</p> <p>15 was passed in 2011, and so there was a lot of robust</p> <p>16 discussion and advocacy about the need to engage authors</p> <p>17 of that bill and to see if we could improve the bill or</p> <p>18 at least point out the significant deficiencies of the</p> <p>19 legislation.</p> <p>20 Q. You mentioned a minute ago that MALC has</p> <p>21 several members that are particularly experts in voter</p> <p>22 related matters or election related matters. Which are</p> <p>23 those members?</p> <p>24 A. I said that there were a few members and the</p> <p>25 members that come to mind is Representative Anchia who</p>	<p style="text-align: center;">23</p> <p>1 or --</p> <p>2 A. Through email.</p> <p>3 Q. Has MALC written any academic papers on voter</p> <p>4 identification?</p> <p>5 A. MALC hasn't. I'm not sure if the individual</p> <p>6 members have, but MALC has not submitted anything in the</p> <p>7 organization's name.</p> <p>8 Q. Has MALC conducted any seminars on this topic?</p> <p>9 A. MALC has not hosted any seminars. I would</p> <p>10 imagine members of MALC have probably participated in,</p> <p>11 you know, panels and discussions at various policy</p> <p>12 conferences at different times.</p> <p>13 Q. Has MALC presented any speakers on this topic?</p> <p>14 A. We have had caucus meetings where our voting</p> <p>15 rights council have addressed the body, addressed the</p> <p>16 membership about any sort of, you know, voting rights</p> <p>17 issues. Voter ID certainly could have been one of them.</p> <p>18 MALC hasn't had any official convenings or policy</p> <p>19 conferences where we would be in a position to invite</p> <p>20 those kinds of speakers.</p> <p>21 Q. Has MALC conducted any studies on this topic?</p> <p>22 A. Not that I know of other than anything that</p> <p>23 might be related to litigation in terms of working with</p> <p>24 different experts, and I'm not -- I'm not saying that we</p> <p>25 have, but I would -- I would imagine that if we are</p>
<p style="text-align: center;">22</p> <p>1 has worked very hard on this subject matter, served on</p> <p>2 the elections committee. I know that Representative</p> <p>3 Gutierrez was on the select committee that considered</p> <p>4 this legislation. I think that Representative Martinez</p> <p>5 from the valley was very involved in the discussion and</p> <p>6 debate, and Representative Ana Hernandez Luna from</p> <p>7 Houston brings a particular perspective having been a</p> <p>8 first generation US citizen. Her perspective was very</p> <p>9 unique and helpful in the debate, and those are the --</p> <p>10 those are the outliers I think that come to mind.</p> <p>11 Q. And those are the members that you were</p> <p>12 referring to a moment ago.</p> <p>13 A. Yes.</p> <p>14 Q. Has MALC written any articles on the topic of</p> <p>15 voter identification?</p> <p>16 A. Nothing for publication. I think that we do</p> <p>17 have a -- a newsletter that we talk about a variety of</p> <p>18 topics. It's a weekly electronic open to anybody who</p> <p>19 wants to receive it. I would -- I would guess that we</p> <p>20 have probably commented on voter identification</p> <p>21 legislation over the course of time.</p> <p>22 Q. The weekly newsletter that you are referring</p> <p>23 to, is that The Caucus?</p> <p>24 A. Yes.</p> <p>25 Q. And it's sent out electronically through email</p>	<p style="text-align: center;">24</p> <p>1 doing any studies, they might be related to litigation.</p> <p>2 Q. And has MALC taken any surveys on the issue of</p> <p>3 voter identification?</p> <p>4 A. Surveys in what context? I'm sorry. I don't</p> <p>5 understand.</p> <p>6 Q. Perhaps public surveys or conducted polls</p> <p>7 that --</p> <p>8 A. Engaging the public, not the membership.</p> <p>9 Q. Sure.</p> <p>10 A. Okay. Not that I'm aware of, no.</p> <p>11 MR. ASTON: Can we go off the record for</p> <p>12 just a minute?</p> <p>13 (Recess from 10:28 a.m. to 10:29 a.m.)</p> <p>14 MS. McLEOD: Michelle McLeod of the</p> <p>15 Department of Justice for defendant Attorney General</p> <p>16 Eric Holder.</p> <p>17 Q. (BY MR. ASTON) Sir, what is your role with the</p> <p>18 Mexican American Legislative Caucus?</p> <p>19 A. I'm the chairman.</p> <p>20 Q. And as chairman what are your duties?</p> <p>21 A. I preside over the caucus. I have an executive</p> <p>22 committee that I work with. We have a vice-chairman, a</p> <p>23 treasurer, secretary, legal counsel. The chairman has</p> <p>24 always had the discretion to -- to engage the membership</p> <p>25 on issues of import to Latino community. Having said</p>

25

1 that, the MALC chairman, you know, also serves merely as
 2 a facilitator for the membership to have the caucus
 3 engage in issues that the members feel are important to
 4 the Latino community. It's a -- I think that from a
 5 policy making standpoint, we are a very good sounding
 6 board for the pulse of the Latino community because the
 7 membership -- to be in the caucus, MALC is one of the
 8 few caucuses that actually has some very -- how should I
 9 say -- some very rigorous membership requirements, and
 10 so as you may know, there are other caucuses in the
 11 capitol that a \$10 fee will make you a member. It's not
 12 the case for MALC, so we are very cohesive in the sense
 13 that we believe our job is to advocate on behalf of our
 14 constituents, and most of our constituents are -- are
 15 majority voting age population Latino, and so we believe
 16 that we probably represent our constituents, but we are
 17 representing their interests.

18 Q. I believe by count, you mentioned five
 19 officers, chair, vice-chair, treasurer, secretary, legal
 20 counsel?

21 A. Yes. I hope I'm not forgetting anybody, but I
 22 think that's it.

23 Q. Those are the officers of MALC?

24 A. Yes, sir, the executive committee.

25 Q. But are there other officers of MALC?

26

1 A. No. And if there are, I'll come back after a
 2 break, but that's what I remember.

3 Q. And especially legal counsel, that is still --
 4 that's a member of the legislature. He serves as legal
 5 counsel. He's not like a staff attorney.

6 A. No. That is a presumptively a member lawyer.

7 Q. How long have you been chairman?

8 A. Since the 2009 session?

9 Q. And have you held any previous leadership
 10 offices with MALC?

11 A. Prior to the 2009 session, I was the
 12 vice-chairman of MALC. Prior to that I was the legal
 13 counsel and prior to that I was the treasurer.

14 Q. How long have you been a member of MALC?

15 A. Since my election into the House, my first
 16 session, which was in 2001.

17 Q. And how long have you been -- you call it the
 18 executive counsel or the executive committee?

19 A. I've been a member of the executive committee
 20 since, I believe, the session of 2003, if not 2005.
 21 It's been a while.

22 Q. When was MALC founded?

23 A. MALC was -- Historically, it has been told that
 24 MALC has been an organization that was together since
 25 the late '60s. We have found some records and

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1 documentation that showed that it was in existence since
 2 1973, and since that's where we find, you know, official
 3 paperwork, that's -- that's the time that we -- that we
 4 use. One of the founders of MALC was elected to the
 5 Texas House of Representatives in the late 1960s, and he
 6 indicates that, you know, MALC was alive and well in the
 7 late '60s, although we can't find documents and records
 8 that go back that far.

9 Q. You mentioned a moment ago that MALC is one of
 10 the caucuses that in your view has more rigorous
 11 membership requirements. When you say caucus in a Texas
 12 House as opposed to a committee or a standing committee
 13 or special committee, what is a caucus in the Texas
 14 House of Representatives?

15 A. Well, I think that everybody will have a
 16 different view. I perceive the Mexican American
 17 Legislative Caucus to be a body of members that work in
 18 some sort of cohesive manner on issues of interest to
 19 the caucus, and so in the interest of our caucus, it's
 20 looking out for the rights of Mexican Americans and
 21 Latinos in specific but in general minority rights.

22 I will say that how that differs from our
 23 caucus, I think, if I'm not mistaken, that I might be a
 24 member of the sportsmen's caucus and I don't really know
 25 what the sportsmen's caucus does, but it sounded cool at

28

1 the time, and I became a member. I'm also a member of
 2 the Democratic caucus and being a Democrat and my
 3 ability to pay my dues makes me a member of that caucus.
 4 And the reason why I'm trying to -- when I use the word
 5 rigor, I think it's known around the capitol that there
 6 are members who would have wished or would desire to be
 7 a member of MALC, but they don't meet the eligibility
 8 requirements to become members, and so it's -- you know,
 9 sometimes we're teased about it because people make us
 10 out to be an exclusive caucus, but, really, what makes
 11 this caucus work is that, you know, we work -- we work
 12 together on many issues. We don't always agree
 13 100 percent, but we always agree to talk it out, and any
 14 one member can bring up any idea at any time so long as
 15 that member is active and present at the meetings.

16 Q. That response I think certainly helps frame
 17 MALC as a caucus as compared to other caucuses. Could
 18 you explain a bit about how a caucus, whether it's MALC
 19 or another one, differs from an official committee
 20 membership appointed by the speaker?

21 A. Sure. Well, for one, if a standing committee
 22 of the House is a committee that's recognized in the
 23 rules and it's defined in the rules and the membership
 24 is laid out and specified and the speaker has, you know,
 25 the discretion in most instances and seniority decides

29

1 the other half of the committee, those committees are
2 given a jurisdiction, and they have official oversight
3 over agencies, they are part of the legislative branch,
4 and so I think that's a big distinction between a
5 committee and a caucus. And a caucus is a body of
6 members that, you know, again, work on issues of similar
7 interest or has a -- you know, lots of commonality with
8 the membership group and members work in achieving
9 objectives that are of mutual interest.

10 Q. Does MALC have an official mission statement?

11 A. I'm not sure that we do. We may. I've been
12 a -- I've been a member of MALC since my election or my
13 first session in 2001, and I've always known that while
14 I may not have ever seen it in print, I view MALC as not
15 only, you know, the oldest and largest Latino caucus in
16 the United States, that our mission is to advocate on
17 behalf of the minority community in Texas. And I think
18 every chairman has sort of had that deference to -- to
19 tailor the -- the need of the caucus, I guess, depending
20 on what is going on at the -- in the present day, and so
21 I can --

22 You know, if I may, in the early 1970s,
23 MALC had a much different meaning. MALC was -- was --
24 You know, people have a tendency to say that MALC looks
25 like they are just Hispanics that just happen to be

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1 Democrats, and they are just a democratic group
2 operating as a Hispanic organization. MALC was created
3 in the 1970s because the democratic majority of the
4 House didn't view the opinions and the voices of the
5 Mexican American representatives the way they wanted to
6 be represented, and so they organized to combat a
7 democratic majority to give themselves a voice and using
8 their leverage as a number of votes to achieve and
9 accomplish their objectives.

10 That's 1970s. You know, we're now in
11 2012, and the needs are different now. You know, we --
12 we very much will never lose site of our mission which
13 is to advocate for civil and social justice on behalf of
14 the minority community, but we also recognize that as we
15 grow demographically speaking, that we have a much
16 larger responsibility and obligation to participate in
17 the body politic to either come up with practical
18 solutions to problems or to find ways -- to find ways to
19 deal with that reality that -- that these are issues
20 that Texans are going to have to address that, you know,
21 census after census dictate or indicate that these
22 Texans will be largely minority.

23 And so I think that MALC sees itself now
24 with a very different mission of having to prepare
25 itself and to prepare folks to -- to accept the

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1 demographic changes the State is bringing and be
2 addressed and be prepared to have leadership positions
3 to provide those solutions on behalf of a growing
4 constituency.

5 Q. To fulfill what MALC views as that role or its
6 role, what were the primary activities -- what were the
7 primary things that they do -- it does to achieve those
8 goals?

9 A. Well, I think that it's two-fold. I think that
10 there is an internal -- you know, there's an internal
11 objective which is to be a member driven member service
12 caucus that provides, you know, again, the facilitation
13 of ideas and the flow and exchange of ideas between the
14 membership, our ability to track legislation that we see
15 as things we want to support and things that we want to
16 engage on. Also, to help members advance their
17 individual legislative agendas.

18 The idea of a caucus is that if the caucus
19 comes together on this issue, then you start off with a
20 block of votes and that's a very good head start in a
21 business where, you know, counting the majority makes
22 the difference on whether your ideas make it out of the
23 House or not. So that's sort of an internal role, and I
24 think MALC does a very good job keeping its members
25 active and engaged and being supportive of their efforts

32

1 to pursue their individual legislative pursuits.

2 Externally, again, I think that there is a
3 recognition that the membership of MALC is all over the
4 State of Texas, and so as a consequence, we find
5 ourselves being an external voice too for advocacy
6 groups, community groups, Hispanic elected officials
7 across the state that come to see us about issues that
8 are important to their region, understanding the
9 different needs and desires of a state as big as Texas
10 that, you know, can elect a Hispanic sheriff in a city
11 as large as Dallas, but at the same time, you know, has
12 a mayor from a border state in Eagle Pass that, you
13 know, happens to be Hispanic as well that have totally
14 different priorities, totally different issues and, you
15 know, MALC sort of tries to serve as that repository of
16 ideas, and -- and I think that over time more and more
17 people outside the capitol have come to MALC for
18 guidance and assistance and advocacy on issues that they
19 feel are important to help.

20 Q. Let's shift our focus for a minute to election
21 and voting issues and MALC's activities in that regard.

22 Does MALC register voters?

23 A. No.

24 Q. Does MALC participate or lead in a get out the
25 vote drives or efforts?

33

1 A. In the name of MALC, no.
 2 Q. Does MALC drive voters to the polls?
 3 A. No.
 4 Q. Does MALC conduct voter education activities?
 5 A. As a matter of -- of forming and shaping public
 6 policy, yes.
 7 Q. Now, when you say "public policy," do you mean
 8 through legislation or otherwise?
 9 A. Well, I think legislation is one form of policy
 10 making, but in -- you know, in terms of being
 11 knowledgeable of the subject matter, individual members
 12 of MALC participate, you know, in various policy
 13 conferences, and those that have the subject matter
 14 expertise oftentimes are sought out, you know, for that
 15 expertise. And so, you know, insofar as it relates to
 16 that, yes, but in terms of MALC having a division or, a
 17 you know, working group or paid staff that engages in
 18 that on a regular constant basis, then the answer would
 19 be no.
 20 Q. When the members, especially the ones with the
 21 particular expertise that we discussed a couple of
 22 times, when they go out and do those activities, whether
 23 it's in their community or in their district or
 24 what-have-you, are they doing those in the name of MALC
 25 or in the name of their representative office?

34

1 A. I think that every individual member will have
 2 a -- their own individual answer. I think as far as I'm
 3 concerned, I mean, whenever I'm asked to engage the
 4 public or participate in various panels or discussion
 5 groups or what-have-you, I am mostly introduced as the
 6 chairman of the Mexican American Legislative Caucus.
 7 Most of my speaking invitations in my roles have been
 8 related to fact that I do chair this, Hispanic caucus so
 9 oftentimes for me, I think it's very intertwined.
 10 Q. Does MALC have office space?
 11 A. It does.
 12 Q. And where is that located?
 13 A. It is a -- I apologize. I'm going to sound
 14 like I'm from the country, but it's just about a hundred
 15 yards west of the capitol. I refer to it as the west
 16 office. It's at the intersection of Colorado and, I
 17 believe, 13th Street.
 18 Q. But it's like -- it's a privately-leased office
 19 space?
 20 A. Privately leased office space next to the Price
 21 Daniel Building, a place you know well.
 22 Q. Yes, sir, I do. You've touched on, I believe,
 23 earlier that MALC is a membership organization with
 24 individual members; is that correct?
 25 A. Yes, sir.

35

1 Q. How many members does MALC have?
 2 A. 39.
 3 Q. Does MALC publish a list of the members?
 4 A. We have our website, yes.
 5 Q. What are the criteria for membership?
 6 A. The by-laws are -- probably have the most
 7 accurate description, but what comes to mind that you
 8 either have to be Hispanic or you have to represent a
 9 district that is majority voting age population
 10 Hispanic, and so those are the two requirements that I
 11 recall.
 12 Q. And it is one or the other, but not both that
 13 is required?
 14 A. Only one, yeah. One or the other, but often
 15 many members have both.
 16 Q. Can a former legislator join MALC or remain a
 17 member of MALC?
 18 A. No. However, I don't -- we don't have a bylaw
 19 that says that, but it is a organization and a caucus
 20 that's for an elected class and there's a dues component
 21 to be a member of MALC as well, and so we've never
 22 accepted or been asked to accept dues from someone who's
 23 not a nonmember or a former member.
 24 Q. And members of the public or other elected
 25 officials, for example, state supreme court justices who

36

1 happen to be Hispanic, they are not eligible for
 2 membership, correct?
 3 A. Correct. Not a bad idea though.
 4 Q. The 39 members of MALC, is that House and
 5 Senate or House only?
 6 A. Just the House.
 7 Q. Does the Senate have a similar organization?
 8 A. I believe there is a Senate Hispanic caucus.
 9 Q. Do you happen to know how many members they
 10 have in that caucus?
 11 A. I know the chairman, Senator Carlos Uresti, but
 12 I don't know their membership. Excuse me. I don't know
 13 their entire membership. I know some of their
 14 membership.
 15 Q. Is MALC a partisan organization?
 16 A. We're not.
 17 Q. How many members of MALC are authorized to ac
 18 or speak on MALC's behalf?
 19 A. I think that any member of MALC is not
 20 prohibited from speaking. The only instance where we
 21 have control is when there is a, you know, press release
 22 or a news conference, you know, those instances, you
 23 know, MALC sends out the press release, you know,
 24 conducts it. Usually it's either going to be an officer
 25 of MALC or a subject matter expert, but MALC doesn't

<p style="text-align: center;">37</p> <p>1 have a rule that that censors or prohibits anyone from</p> <p>2 speaking. That's not -- That's not anything that we</p> <p>3 would do.</p> <p>4 Q. But if a press release were to go out or if a</p> <p>5 press conference was to be called on behalf of MALC, how</p> <p>6 many members would be authorized to issue that release</p> <p>7 or call that press conference on behalf of the</p> <p>8 organization?</p> <p>9 A. Well, the MALC staff would always handle the</p> <p>10 work, so members will never be asked to do that work</p> <p>11 product, so that's more of a staff driven thing, and I</p> <p>12 guess the true answer lies in the origin of the news</p> <p>13 conference. So if, for instance, we had a member who</p> <p>14 was, you know, very concerned about, you know, voter</p> <p>15 identification legislation and wanted to have a press</p> <p>16 conference to highlight that issue, you know, they would</p> <p>17 simply, you know, coordinate that with, you know, MALC</p> <p>18 and MALC staff, and they would be asked and charged to</p> <p>19 lead that.</p> <p>20 On the other hand, there have been press</p> <p>21 conferences that I have arranged. I have asked people</p> <p>22 to speak on our behalf, and so there's -- it's not</p> <p>23 necessarily very formal, but I think that members by</p> <p>24 their own designation as elected officials have the</p> <p>25 ability to host and conduct press conferences and really</p>	<p style="text-align: center;">39</p> <p>1 or file a lawsuit on MALC's behalf?</p> <p>2 A. I don't believe they can.</p> <p>3 Q. The five officers that we've discussed a couple</p> <p>4 of times, the executive committee, are any of those</p> <p>5 officers currently Republican?</p> <p>6 A. No.</p> <p>7 Q. Do you know if any of the five current officers</p> <p>8 are members of the House who voted in favor of Senate</p> <p>9 Bill 14?</p> <p>10 A. If any executive committee member voted in</p> <p>11 favor of Senate Bill 14? Bear with me. I didn't vote</p> <p>12 for it. I don't believe Vice-chairman Rodriguez voted</p> <p>13 for it. I don't believe that Secretary Martinez voted</p> <p>14 for it. I don't believe that Treasurer Gutierrez voted</p> <p>15 for it, and I'm fairly certain that Counsel Gonzales did</p> <p>16 not, as in Veronica Gonzales, did not vote for it.</p> <p>17 Q. Do you know how many MALC members did vote for</p> <p>18 Senate Bill 14?</p> <p>19 A. Specifically, I don't know. I want to say</p> <p>20 anywhere from five to seven members. I can certainly</p> <p>21 take a look at the list during the break and come back</p> <p>22 and answer that.</p> <p>23 Q. That would be great. Did any MALC members</p> <p>24 oppose MALC's intervention in this suit?</p> <p>25 A. Not -- Not in any communication that came to</p>
<p style="text-align: center;">38</p> <p>1 rarely need the support of MALC. So it's not something</p> <p>2 that we focus on as a member service, but, you know, we</p> <p>3 have a briefing room. For instance, if somebody wanted</p> <p>4 to use our briefing room, it just requires them to ask</p> <p>5 for the use of it.</p> <p>6 Q. Suppose we're talking about something very</p> <p>7 formal like filing a lawsuit or intervening in a</p> <p>8 lawsuit. Which members have the authority to do</p> <p>9 something like that on behalf of MALC?</p> <p>10 A. I think that any member of MALC has the ability</p> <p>11 to raise the issue in terms of, you know, this is</p> <p>12 something that we should get engaged in or this is</p> <p>13 something that we should stay away from. I think that</p> <p>14 when it rises to the level of spending funds, I think it</p> <p>15 falls within the realm of the executive committee. I</p> <p>16 think when it comes to the discretion of the caucus to</p> <p>17 engage in these matters, it certainly can come from the</p> <p>18 chairman as well, and so I think the by-laws, you know,</p> <p>19 sort of spell out what each officer's duties are.</p> <p>20 I do know that as chairman that I do have</p> <p>21 broad discretion, but I also know that the practice of</p> <p>22 the caucus is for any individual member to be able to</p> <p>23 raise any individual issue at any time and not be</p> <p>24 limited because they're non-officers.</p> <p>25 Q. But could a non-officer intervene in a lawsuit</p>	<p style="text-align: center;">40</p> <p>1 the MALC staff and myself.</p> <p>2 Q. Do you know how many Republicans are currently</p> <p>3 members of MALC?</p> <p>4 A. I don't off the top of my head. I certainly</p> <p>5 could look at the membership list and tell you. I mean,</p> <p>6 I would sense it's anywhere between four to six or</p> <p>7 seven, somewhere around there. It's a small number.</p> <p>8 Q. But because the membership list is public on</p> <p>9 your website, that is available.</p> <p>10 A. Absolutely it's available.</p> <p>11 Q. How many employees and/or staff does the caucus</p> <p>12 have?</p> <p>13 A. I think it varies from a legislative session to</p> <p>14 an interim session, so, currently, there are -- there</p> <p>15 are -- not to be technical, but I'd say there are two</p> <p>16 and a half members of MALC. We have one full-time</p> <p>17 employee. We have a second full-time employee. And</p> <p>18 Marty, you know, appropriates his time between the</p> <p>19 capitol office and MALC, and so, I mean, in theory he</p> <p>20 works for MALC as well, but he doesn't exclusively work</p> <p>21 for MALC.</p> <p>22 Q. When you refer to the capitol office, you are</p> <p>23 referring to your staff?</p> <p>24 A. Yes.</p> <p>25 Q. Does MALC rely on volunteers?</p>

41

1 A. We don't rely on volunteers. We have used
2 volunteers. You know, interns, we have a fellowship
3 program as well. We've utilized our fellows both at
4 the -- at our designated, you know, home office and,
5 also, in our member offices.

6 Q. And how many volunteers does MALC have at any
7 one time? Is that a pretty small number?

8 A. I think so. It would be anywhere -- I would
9 imagine we would pick up one to two during a legislative
10 session. We may even pick up a -- We may even hire an
11 initial staff person during legislative session. That's
12 sort of the cycle. We're busier during the legislative
13 session than we are in the interim.

14 Q. What is MALC's annual budget?

15 A. I am not quite sure. We -- Fortunately, we --
16 we have successful fundraising initiatives and the
17 fundraising is able to fund the caucus. We employ an
18 outside accountant who really handles those matters,
19 and, frankly, it's -- it's so much handled outside that
20 MALC staff has to request checks in order to write them,
21 and so those finances are outsourced.

22 Q. From whom do you raise money?

23 MR. GARZA: Objection. It's not relevant
24 to the issues before this case. It is harassment of the
25 organization. We believe that it is a violation of the

42

1 organization's First Amendment rights to inquire into
2 its sources of income, and I'm instructing the witness
3 not to answer.

4 Q. I'm not asking as to individual donors or a
5 donor list. What I'm wanting to know is do you get
6 government grants?

7 MR. GARZA: You can answer that question.

8 A. No, we don't.

9 Q. Do you accept private donations?

10 A. We do.

11 Q. Do you accept donations from corporations?

12 A. We do.

13 Q. And from private citizens?

14 A. Less so, but, yes. And I might add that MALC
15 files compliance reports with the Texas Ethics
16 Commission, so that information is also accessible on
17 the website.

18 Q. Do you know how much money you received in
19 those grants in the last year?

20 A. We didn't receive grants.

21 Q. How about from the donations?

22 A. I couldn't tell you, but I know that we
23 annually fundraise, and we've been very successful in
24 our fundraising.

25 Q. Could you approximate how successful?

43

1 A. I have -- I wouldn't want to speculate, but I
2 will say that, you know, when you look at the cost
3 associated about litigation and so forth, that you have
4 to be raising, you know, a good amount of money to be
5 able to engage the State of Texas.

6 Q. Do you know about -- Can you approximate what
7 percentage of your annual budget would be devoted to
8 election/voter issues?

9 A. I don't know if I could tell you that. I don't
10 believe that we apportion or approximate, you know,
11 based on those issues. I can tell you that the -- an
12 overwhelming majority of our resources is dedicated to
13 our policy caucus and our public policy issues that we
14 find to be of substantial import, and I think over the
15 course of the 2011 session, two of the subject matters
16 that kept us the busiest was legislative redistricting
17 which impacts voters and voter identification
18 legislation is what we're before right now.

19 Q. Has MALC made any plans to assist voters with
20 compliance with Senate Bill 14 if it goes into effect?

21 A. MALC in its official capacity, no.

22 Q. Has MALC any plans to educate voters as to
23 Senate Bill 14 if it goes into effect?

24 A. I don't believe MALC's made any plans. I would
25 imagine through our communications we've articulated,

44

1 you know, some of the problems that we believe are
2 associated with this type of legislation and how it
3 could impact elections in our various communities, but
4 we have not done any strategic planning or set out a
5 task list to accomplish things by election date.

6 Q. Will MALC educate voters about the requirements
7 of Senate Bill 14?

8 A. It would be my hope that if Senate Bill 14
9 passes, the State of Texas would assume that
10 responsibility. That's at least what they've reported
11 to do in the legislation, so my hope is that that's
12 being done now. Having said that, you know, MALC is
13 a -- is a communications piece for -- for Hispanics
14 across the State of Texas, and we certainly believe that
15 we try our best to keep them informed on issues that may
16 have an impact on their lives.

17 Q. And would MALC help voters either obtain photo
18 identification or the underlying documents necessary to
19 obtain photo identification?

20 A. I think that as a means of being a disseminator
21 of information, I think so.

22 MR. ASTON: How about a break before we
23 move on?

24 THE WITNESS: I'm fine. I'll follow you.
25 (Recess from 10:59 a.m. to 11:07 a.m.)

<p style="text-align: center;">45</p> <p>1 (Exhibit 3 marked.)</p> <p>2 Q. (BY MR. ASTON) Please take a minute to review</p> <p>3 what's been marked Exhibit 3.</p> <p>4 A. I felt like you are a test proctor. I didn't</p> <p>5 want to flip until you told me.</p> <p>6 Q. Do you recognize this?</p> <p>7 A. It looks like Senate Bill 14.</p> <p>8 Q. When was the first time you read this bill?</p> <p>9 A. Well, I read a version of this bill when it was</p> <p>10 introduced. I read a version of this bill when it was</p> <p>11 presented on the floor, and I have attempted to keep up</p> <p>12 with the bill as it may have changed in conference and</p> <p>13 outside the bounds, and so the final legislation I can't</p> <p>14 recall spending a lot of time studying it, but I think I</p> <p>15 saw it develop over the course of time.</p> <p>16 Q. And one version or another, you've read it a</p> <p>17 handful of times.</p> <p>18 A. Well, I can't say I read it a handful of times,</p> <p>19 but I've certainly read it and studied it.</p> <p>20 Q. Have you discussed the bill with people at</p> <p>21 MALC?</p> <p>22 A. Not -- Not in any precise detail. I'm sure</p> <p>23 we've talked about it.</p> <p>24 MR. GARZA: When you say that, Adam, are</p> <p>25 you talking about the staff or the members?</p>	<p style="text-align: center;">47</p> <p>1 Q. Was Senate Bill 14 discussed during any of the</p> <p>2 MALC members meetings?</p> <p>3 A. Well, again, what -- what comes to mind is the</p> <p>4 specific briefing we had on -- on voting rights that</p> <p>5 Jose Garza participated in with another lawyer by the</p> <p>6 name of Joaquin Avila who was available by conference</p> <p>7 call and that we talked about what we perceived to be</p> <p>8 some, you know, very discriminatory pieces of</p> <p>9 legislation in both voter ID and redistricting. At the</p> <p>10 time there were, you know, Sanctuary Cities, and so</p> <p>11 there never in my mind was a meeting that was</p> <p>12 specifically called, you know, for voter ID and only</p> <p>13 voter ID, but it certainly came up in the membership</p> <p>14 meetings.</p> <p>15 Q. Have you discussed or debated the bill with</p> <p>16 people who are outside the legislature?</p> <p>17 A. Discussed or debated the bill with people</p> <p>18 outside the legislature. I think the easy answer is I</p> <p>19 certainly have discussed it outside the legislature.</p> <p>20 Whether I've engaged in any debate, I mean, from a</p> <p>21 coffee shop debate or a policy conference, likely.</p> <p>22 Q. Probably with constituents?</p> <p>23 A. No, no. I mean, I think nothing specific, but</p> <p>24 I think that I happen to participate in, you know, lots</p> <p>25 of public appearances and being an invited guest to</p>
<p style="text-align: center;">46</p> <p>1 MR. ASTON: Both. But let's do members</p> <p>2 first.</p> <p>3 A. Okay. Well, clearly, I mean, in the</p> <p>4 preparation, in the engagement and the debate and the</p> <p>5 offerings and amendments and all of the legislative</p> <p>6 tactics, I mean, of course multiple conversations.</p> <p>7 Q. Both on the floor and off.</p> <p>8 A. On the floor, off, in my sleep, people on this</p> <p>9 list, people not on the list of the waivers, of course.</p> <p>10 In terms of the staff, if it was an assignment that was</p> <p>11 research based or, you know, empirical or find out what</p> <p>12 other states are doing, absolutely. In terms of, you</p> <p>13 know, having a discussion or -- or a -- dissecting the</p> <p>14 bill with the staff, no.</p> <p>15 Q. Does MALC, the caucus -- And maybe I should</p> <p>16 have asked this earlier. Do they have weekly meetings,</p> <p>17 biweekly meetings? Do they have regular group sessions?</p> <p>18 A. MALC meetings are called by the chair. They --</p> <p>19 they -- The idea is to have them, you know, on a</p> <p>20 recurring basis, but it's not a standing meeting, and,</p> <p>21 again, the reason for that is there is the flexibility</p> <p>22 that -- that, number one, it's a very busy legislative</p> <p>23 session. Number two, members should have the</p> <p>24 flexibility to have a convening nearby saying that we</p> <p>25 need to meet for a particular reason.</p>	<p style="text-align: center;">48</p> <p>1 speak at different panels and so forth. So if a topic</p> <p>2 came up, I knew how to talk about it.</p> <p>3 Q. Is MALC familiar with what the different</p> <p>4 provisions of the final bill do?</p> <p>5 A. I would like to think that we are.</p> <p>6 Q. Does MALC know what forms of photo ID will be</p> <p>7 acceptable for voting at the polls?</p> <p>8 A. I think that they know among the more, you</p> <p>9 know, popular, of course. I was reviewing it this</p> <p>10 morning and/or just in some of the -- some of the</p> <p>11 objections that were made in the answers, and there were</p> <p>12 some things that I didn't -- you know, I didn't realize.</p> <p>13 I'm mostly familiar with the driver's license, the</p> <p>14 passport, the concealed gun license. I didn't think for</p> <p>15 a minute that a state ID just -- a non-driving state ID</p> <p>16 would be sufficient just didn't occur to me, but I can</p> <p>17 understand why it's on the list.</p> <p>18 Q. You mean, the personal identification card?</p> <p>19 A. Right.</p> <p>20 Q. Like a state employees's --</p> <p>21 A. Right.</p> <p>22 Q. That's what you are referring to, right?</p> <p>23 A. Right.</p> <p>24 Q. Can we turn to Section 5 on Page 3, please?</p> <p>25 This section opens with voter identification education.</p>

49

1 Is this the section you were referring to a few minutes
2 ago when you said that the legislation requires the
3 state to do some education with the voters?
4 A. This -- In part, but in the bill analysis,
5 specifically in the fiscal note, there was express
6 language that the State of Texas by and through the
7 Secretary of State would use up to \$2 million of HAVA
8 money to educate voters on the changes in voting, and I
9 think it's -- you know, there's a split opinion as to
10 whether that is an appropriate use of HAVA money. So
11 I'm familiar with that and that sort, of course, takes
12 me to Section 5 that says that the State does have an
13 obligation and responsibility to educate the voters.
14 Q. Section 14 begins on Page 9, and this is the
15 list of acceptable identification. Part 1, which begins
16 on Line 18, reads a driver's license, election
17 identification certificate or personal identification
18 card issued to the person by the Department of Public
19 Safety. Do you know what an election identification
20 certificate is?
21 A. I don't know. Unless, of course, this is the
22 new ID that's being proposed. I've never seen one, and
23 so because it's underlined, it would tell me that that's
24 something new, and so I imagine that that's defined
25 somewhere else in the bill.

50

1 Q. Yes, sir. Section 20 which begins on Page 13.
2 A. Okay.
3 Q. If you'll review that for a minute.
4 A. I'm very familiar with the evolution of this
5 card. Very interesting topic.
6 Q. So MALC is aware of the idea of the election
7 identification certificate being something that a voter
8 can obtain --
9 A. Yes.
10 Q. -- free of charge at the DPS offices?
11 A. I think the free part is in dispute, but I
12 believe they can obtain one, yes.
13 Q. Do you dispute that the card itself is free or
14 that the things you need to get or to obtain the card
15 would be free?
16 A. Well, both. Certainly it could cost a voter to
17 physically prepare themselves to present relevant
18 documentation to qualify for one, but I think that
19 there's been a dispute in the debate of the bill as to
20 the state's method of financing these cards. Some would
21 argue that it's an intrusion on our Texas Mobility Fund,
22 which would be unconstitutional. Others would say that
23 that part has been cured. I don't know if it has, but
24 certainly it's something that's very important to TXDOT
25 and bond covenants and our full faith and credit.

51

1 Q. But does MALC agree that the voter himself or
2 herself who appears at the DPS to obtain one of these
3 cards will not be charged a fee at the time of obtaining
4 that card?
5 A. I think we can agree that a -- that a person
6 who is seeking a certificate shall not be required to
7 give money to the Department of Public Safety or to
8 receive a certificate. Yes, we can agree on that.
9 Q. Is MALC aware of who'll be exempt from showing
10 a photo ID to vote if Senate Bill 14 takes effect?
11 A. I believe they would know -- MALC would know,
12 its members would know, and those who would look at it,
13 you know, with the -- with the legislative or with the
14 legislation that's -- and supporting documents, I think,
15 they could figure it out yes.
16 Q. And who'll be exempt?
17 A. I think -- I'm aware of a narrow religious
18 exception that I know and that will be for those who
19 don't want to be photographed. That's the one that
20 comes to mind right now.
21 Q. Are you aware of an exception for those over
22 the age of 65 that would not have to present the photo
23 ID if they wish to vote?
24 A. I'd have to refresh my memory.
25 (Exhibit 4 marked.)

52

1 Q. Please review the next exhibit. Have you seen
2 this provision to the election code before?
3 A. In some form or fashion, yes.
4 Q. And do you recognize this as a current
5 provision of law --
6 A. For those who wish to vote by mail, yes.
7 Q. And this is Election Code, Section 82.003, Age.
8 "A qualified voter is eligible for early voting by mail
9 if the voter is 65 years of age or older on election
10 day."
11 A. Yes.
12 Q. Does MALC recognize that this provision would
13 allow anyone who's 65 years or older to vote without a
14 photo ID?
15 A. I think MALC would recognize that this allows
16 the person who's 65 years of age or older to vote by
17 mail.
18 Q. Without a photo ID?
19 A. Well, I'm not -- I can't tell you from the
20 letter of that statute that that's the objective. I
21 think that as I understand it and as I think MALC would
22 understand it that when a person registers to vote,
23 there are some instances where the Secretary of State
24 would require the presentation of some form of ID at one
25 point or another if in fact the driver's license or

53

1 other identification didn't match up with their internal
 2 record.
 3 And so, you know, is it likely that that
 4 could have happened to a person who then turns 65 and
 5 chooses to vote by mail? At some point there would have
 6 been a presentation of identification. But I can also
 7 see your instance where if someone who turns 65 years of
 8 age and decides they just want to vote by mail that they
 9 can request a ballot with a paper request and receive
 10 the ballot.

11 Q. And MALC would agree that a mail-in ballot
 12 counts just the same as an in-person ballot on election
 13 day?

14 A. I would hope so.

15 Q. Sir, do you have a Texas driver's license?

16 A. I do.

17 Q. How does your name appear on your driver's
 18 license?

19 A. How in print, you mean, or what name appears?

20 Q. Is it your full name? Is it your name without
 21 a middle initial or how does it appear?

22 A. It is my legal name on my driver's license.

23 Q. Trey Martinez name?

24 A. Ferdinand Frank Fischer, III.

25 Q. So for the court reporter, how does that

54

1 appear?

2 A. Ferdinand Frank Fischer, III.

3 Q. What address appears on your driver's license?

4 A. My home.

5 Q. Do you have a passport?

6 A. I do.

7 Q. How does your name appear on your passport?

8 A. I believe it says Ferdinand Frank Fischer, III.

9 Q. Do you have a military photo ID card?

10 A. No, sir.

11 Q. Do you have a license to carry a concealed
 12 handgun?

13 A. I believe a recently expired one.

14 Q. How did your name appear on that license?

15 A. I believe Ferdinand Frank Fischer, III.

16 Q. Are you registered to vote in Texas?

17 A. I am.

18 Q. How does your name appear on your voter
 19 registration card?

20 A. I believe Ferdinand F. Fischer, III.

21 Q. Do any of MALC's members lack the photo ID that
 22 is required by Senate Bill 14?

23 A. I don't believe that they lack the ID -- I
 24 mean, a form of the acceptable IDs.

25 Q. MALC cannot identify any member who lacks any

55

1 of those forms of ID.

2 A. Not that I -- No, I cannot.

3 Q. Do any of MALC's members contend that they will
 4 be unable to vote if Senate 14 is precleared and takes
 5 effect?

6 A. No.

7 Q. So Senate Bill 14 will not deny or abridge any
 8 MALC member's right to vote.

9 A. The individual member, no.

10 Q. Does MALC represent anyone else in this
 11 litigation besides the organization?

12 A. MALC -- MALC counsel represents the
 13 organization.

14 Q. So MALC represents MALC and no one else in this
 15 lawsuit?

16 A. That is correct.

17 Q. So then would it be true that MALC has
 18 intervened because some of its members strongly oppose
 19 Senate Bill 14 rather than because its members lack the
 20 photo identification and fear that they will be unable
 21 to vote if Senate Bill 14 goes into effect?

22 A. I think dislike or disapprove or oppose the
 23 legislation. I mean, that is certainly true, but I
 24 think that the essence is is that members of MALC oppose
 25 it because they know it impacts their constituents who

56

1 elect them to serve.

2 And so while directly it doesn't infringe
 3 on an individual's ability to vote if they possess any
 4 of those forms of identification, these members know,
 5 particularly those that are in very heavily populated
 6 minority communities, that the -- the evidence was a
 7 theory and a hunch at the time of the legislation's
 8 formation and it's certainly become more and more
 9 evidence to the development of the evidence at trial
 10 that minorities are more likely to be impacted by this
 11 voter identification legislation.

12 So I think in theory when you -- when you
 13 are a membership caucus that represents the minority
 14 community, then it is very likely that those impacted by
 15 this kind of legislation are the very constituents that
 16 these members were elected to represent.

17 Q. How would preclearance of Senate Bill 14 injure
 18 MALC as an organization?

19 A. I think -- I think, again, that if MALC deems
 20 itself and views itself as sort of a protector and
 21 gatekeeper for advocating on behalf of the Latino
 22 community, any time there's any piece of legislation
 23 that has an impact on Latinos and minorities, it
 24 certainly -- it certainly doesn't settle well with MALC
 25 because if there's -- if it's not MALC looking out for

57

1 their interests, then, you know, there's not really
 2 anyone left. And so we take those things very seriously
 3 for those reasons. That's what we believe our mission
 4 is.
 5 Q. So it is MALC's belief that it is -- how this
 6 bill would impact the constituents of the individual
 7 members of MALC, that is, the concern that MALC -- that
 8 brought MALC into this lawsuit.
 9 A. Could you say that again, please?
 10 MR. ASTON: Actually, could she read that
 11 back, please?
 12 (Requested portion was read.)
 13 A. I think broader than that, I think that MALC's
 14 interest in this bill would be for advocacy on behalf of
 15 the Latino community and recognizing that there are
 16 Latinos in the State of Texas that aren't currently
 17 represented by a MALC member. So I think much broader
 18 than we view this the same way we viewed redistricting,
 19 which was the entire state, everybody included, but
 20 precisely the -- the Latino -- the Latinos in the state
 21 that we wanted to make sure had fair districts and given
 22 the opportunity to elect candidates of choice.
 23 Q. So MALC members believe that this bill will
 24 affect their ability to be reelected -- will affect
 25 their constituents' ability to elect them?

58

1 A. I think MALC feels that -- that the
 2 constituents of those members will be impacted, but,
 3 again, so will minorities who don't reside within those
 4 constituency districts and so the overall policy
 5 objection to impacting the minority community, both
 6 within members' districts and other parts of the state.
 7 Q. Did MALC provide its members or staff with any
 8 written materials on voter ID during the 2011
 9 legislative session?
 10 A. Nothing that I recall. There are instances,
 11 however, where members will request, you know,
 12 information. They may have dispatched staff to
 13 conduct -- have some sort of research assignment. We
 14 may have notified them of bill alerts. We may have
 15 notified them about making sure they were present on the
 16 floor for upcoming debates. Certainly there had been
 17 those forms of communication, but I don't recall a
 18 specific briefing document that was created by MALC and
 19 distributed, you know, exclusively on voter
 20 identification.
 21 Q. Have these materials, unless they're covered by
 22 the privilege, been produced to the State?
 23 A. I believe that, you know, MALC having gone
 24 through redistricting and being very knowledgeable of
 25 our obligations have done the best search that we can

59

1 when we presented anything that has been requested to us
 2 to present to our lawyers who then presented them for
 3 inspection or distribution.
 4 Q. And a privilege log was also produced?
 5 A. I will -- I will rely on your --
 6 Q. To your knowledge, you believe that it was?
 7 A. I don't know, but I wouldn't be surprised if
 8 there was one.
 9 Q. Did MALC provide its members or staff with any
 10 written materials on voter ID in the 2009 legislative
 11 session?
 12 A. That I recall, no. And, again, I believe it
 13 would be -- if that was a discovery request that was
 14 presented to us, then we would have conducted our search
 15 and presented any documents that were relevant that
 16 weren't subject to a privilege or privilege log to our
 17 counsel for distribution.
 18 Q. Did MALC provide its members or staff any
 19 written materials on voter ID in any previous or prior
 20 legislative sessions?
 21 A. Prior to 2009, I wasn't the chair of the
 22 caucus. I certainly was a member of the executive
 23 committee. Again, I don't recall that being the case,
 24 but if we did, we would have certainly provided that
 25 information if properly requested.

60

1 Q. And would the same go for any materials
 2 provided to members during any legislative interim?
 3 A. I believe so with a -- with a lean more
 4 towards -- you know, more inactivity in the interim.
 5 Q. Less likely that there's anything out there.
 6 A. Right.
 7 Q. Did MALC meet with any interest groups about
 8 Senate Bill 14 prior to or during the 2011 legislative
 9 session?
 10 A. Interest groups with regard to voter
 11 identification?
 12 Q. Senate Bill 14.
 13 A. Senate Bill 14? I know that no interest group
 14 addressed MALC on Senate Bill 14. I can't say with
 15 certainty that the MALC staff wasn't engaged by an
 16 interest group, and what I'm thinking about, I'm
 17 thinking about the official instances when someone
 18 knocks on our door and says we want to meet with you
 19 versus you are in a committee room, you are in the
 20 gallery of the capitol, you are in a -- you know, the
 21 pit, outside the front door, where, you know, there is
 22 just constant communication going on, and so in those
 23 instances I think there might be a higher frequency
 24 where there could be some engagement in dialogue, but in
 25 terms of official requests for visits or communications,

<p style="text-align: center;">65</p> <p>1 A. Well, I think the fact that it was a Senate 2 bill, I think MALC had very little influence on 3 controlling the pace of the Senate. To the extent that 4 it came to the House and found itself behind the local 5 calendar, I would imagine that many members in MALC 6 participated in debates that prevented Senate Bill 362 7 from coming to the floor. 8 Q. Would those efforts have been at MALC's urging 9 or request? 10 A. No, not at their request. But I know -- Again, 11 I believe that MALC is a collection of members, and 12 sometimes I think actions speak louder than words. 13 Q. Did MALC undertake any efforts in an attempt to 14 defeat Senate Bill 362? 15 A. I'm sorry? 16 Q. Did MALC undertake any efforts in an attempt to 17 defeat Senate Bill 362? 18 A. I don't know that MALC did. Again, my 19 recollection of the -- of the occurring on the floor -- 20 what occurred on the floor, that remaining members of 21 MALC engaged in debate and discussion that -- that, you 22 know, prevented Senate Bill 362 from becoming eligible 23 or becoming considered on the House floor. 24 Q. Let's shift focus back to Senate Bill 14. 25 Prior to or during the 2011 legislative session, did</p>	<p style="text-align: center;">67</p> <p>1 committee to debate on the floor, I think at all times 2 there was a, you know, pretty large group of MALC 3 members working in opposition to the bill. 4 Q. If The Caucus published or produced or whatever 5 in your mind The Caucus does when it sends out its 6 email -- 7 A. The Caucus -- The blast. 8 Q. The Caucus, the newsletter email, not the 9 caucus, the organization. If The Caucus newsletter 10 spoke out against Senate Bill 14, would that represent 11 MALC's public statement? 12 A. I think that would represent a form of a public 13 statement, yes. I don't think that that would be the 14 way or the only way to make a public statement about 15 being in support or in opposition to legislation. 16 Q. Sure. There are other ways. 17 A. Sure. 18 Q. But MALC would recognize that if it publishes 19 in The Caucus a statement opposing a bill, that should 20 and is construed as a public statement of that position. 21 A. I certainly believe one could rely on that, of 22 course. 23 Q. Did MALC undertake any organized efforts to 24 stop the passage of Senate Bill 14? 25 A. I think in the -- if one could get away with</p>
<p style="text-align: center;">66</p> <p>1 MALC take a public position as an organization whether 2 Senate Bill 14 should pass? 3 A. I don't know if we did. I think in the event 4 that there was discussion about a upcoming voter 5 identification legislation, I know that if I was asked 6 to comment on behalf of MALC, I would have said that I 7 would be opposed to it. 8 Q. Would you have said that I represented -- 9 Representative Martinez Fischer would be opposed to or 10 MALC would be opposed to it or both? 11 A. It could be both. Oftentimes, we try to 12 parse -- when there's a request for coverage, is it 13 coming out of the caucus office or is it coming out of 14 my member office, but I can't control what ultimately is 15 written by writers. You know, oftentimes I've seen my 16 title, you know, used in, you know, whether it's House 17 rep or chairman of MALC. 18 Q. Was MALC opposed to Senate Bill 14? 19 A. Yes. 20 Q. When did MALC take that position? 21 A. I can't tell you a specific date and time. I 22 imagine any public statements we made, you know, I think 23 that those statements and those dates of times would 24 obviously be the best evidence. I think the actions and 25 the deliberations by MALC members from referral of</p>	<p style="text-align: center;">68</p> <p>1 saying -- using the word organized on the House floor, I 2 mean, it's -- anyone who has experienced it, it's less 3 than that, but I think the record, you know, clearly 4 indicates the -- the very first point of order on the 5 voter identification bill that sent it back to committee 6 was, you know, lodged by a MALC officer. 7 And so I think from -- If the floor debate 8 is the starting point, I think you would find that, I 9 guess, the -- the lead opposition voices to Senate Bill 10 14 were members of MALC. 11 Q. The point of order, that would be one 12 procedural mechanism by which you could slow down 13 consideration of a bill? 14 A. Well, sometimes you can permanently defeat a 15 bill, but, yes, in that instance, procedural defect, 16 that would delay passing the bill. 17 Q. Are there other procedural mechanisms that MALC 18 officers or MALC members used? 19 A. Well, I think there's obviously the debate -- 20 the speaking and debate. I think there's the ability to 21 change legislation by offering amendments. I think 22 there's, you know, the leverage and discussions that 23 often take place when you are trying to shape the 24 legislation and that would be at the point it's 25 introduced when it's heard in committee, when it's</p>

69

1 passed out of committee, when it's sitting in calendars.
2 I mean, at all points certainly, you know, MALC members
3 were -- if there was a discussion to be had about making
4 the bill acceptable to MALC, MALC members would have
5 participated. If there was a opportunity to improve the
6 bill with a floor amendment, MALC members participated.
7 If there was a way to tactically, strategically delay or
8 defeat the bill, I would imagine MALC members were
9 involved in that too.

10 Q. Do you recall whether you were involved in some
11 of those activities?

12 A. Guilty by association, yes.

13 Q. I just want to be clear. I believe a minute
14 ago you said that there were tactics to delay or defeat,
15 and both of those were attempted?

16 A. Yes.

17 Q. Not always successfully, but MALC members would
18 have attempted both of those kinds of tactics with
19 respect to Senate Bill 14.

20 A. MALC members did, yes.

21 Q. And MALC officers?

22 A. And MALC officers.

23 Q. Did MALC as an organization urge its members or
24 its officers to utilize any of those tactics to stop or
25 delay the bills in the past, not Senate Bill 14, but --

70

1 A. Well, I think that MALC from a organizational
2 staff perspective, you know, is probably, you know, more
3 along the lines of an information resource. I think
4 that once the recommendation actually makes its way into
5 a committee or onto the floor, it really is in a sort of
6 a member only project, and so insofar as MALC had any
7 role in coordinating members, it would have been the
8 things that I referred to, sending you a text message to
9 be on the floor, calling around in your offices to make
10 sure your boss is accessible for a vote, but most of
11 those discussions in terms of, you know, actual floor
12 strategy or parliamentary tactics, those would have been
13 individual discussions with members that would have been
14 member to member.

15 Q. Would you, MALC, consider these kinds of
16 tactics to be pretty standard in the Texas House?

17 A. I think the -- I think it's not only standard,
18 I think it's historically significant. I mean, this is,
19 you know, the -- from the days of Abe Lincoln jumping
20 out of a window to break quorum, I mean, you've heard
21 legendary stories about the use of the rules and
22 parliamentary procedure to empower minority. In this
23 instance, it's a minority within a minority.

24 Q. Are you familiar with the term chubbing?

25 A. Yes. And I want you to know that I'm on a

71

1 1,700 calorie a day diet as a result of that. I don't
2 like that stigma, but I do know the term.

3 Q. In the Texas House of Representatives, what
4 does the term chubbing mean?

5 A. I believe it means a -- an excessive use of the
6 microphone to stall or to delay a bill from passing.

7 Q. Is there a rule in the House rules regarding
8 chubbing?

9 A. I don't know that there is. I think that there
10 are rules about civility and decorum, about speaking
11 over each other. I think that the -- there's certainly
12 a practice of chubbing and there's certainly a
13 commentary on chubbing itself. I've never heard of a
14 point of order being called or sustained because a
15 member was speaking excessively.

16 Q. What is the practice of chubbing?

17 A. Well, I will represent one time as a junior
18 member that there was a piece of legislation, you know,
19 was controversial, and I watched two senior members and
20 I know one of them was Warren Chisum, and he's very
21 seasoned in the rules, and I remember him just talking
22 at length about a bill that really meant nothing. But
23 what I didn't know is that while he was spending all
24 this time on the microphone, there were members of the
25 legislature on airplanes coming back to Austin so that

72

1 they could participate in the upcoming controversial
2 vote. So that's approximately been my first exposure to
3 what is known as chubbing, and I imagine that every
4 session has some instance where that occurs.

5 Q. I don't want to mischaracterize you. Did you
6 call that excessive talking or --

7 A. Well, I said -- when you asked me what I
8 thought it meant, I think it's when a member talks
9 excessively.

10 Q. Is there a time limit that is required to reach
11 that point?

12 A. You do have -- You do have layout provisions
13 that call for -- for 10-minutes, and you do have
14 specific rules that allow time for pro and con speeches.
15 On the other hand, there are rules that -- that give
16 members privileges that are not bound by time. So -- So
17 the -- in those instances, the rules did provide for,
18 you know, very express limitations on time.

19 (Exhibit 5 marked.)

20 Q. Please take a minute to review -- any or all
21 that you wish to review, but what we're going to focus
22 on is Section 14.

23 A. I've read it.

24 Q. Do you recognize this as House Rule 6, Section
25 14?

73

1 A. Yes, I do.
 2 Q. And then Subpart 4.
 3 A. Yes.
 4 Q. Which reads, "Any bill or resolution on a local
 5 consent and resolutions calendar shall be considered
 6 contested. If the debate exceeds 10 minutes, the chair
 7 shall strictly enforce this time limit and automatically
 8 withdraw the bill from further consideration if the time
 9 limit herein imposed is exceeded."
 10 A. Correct.
 11 Q. Is this the sort of procedure you are talking
 12 about when you are talking about chubbing?
 13 A. No. I mean, I think you could say that that is
 14 chubbing, but you could talk for 9 minutes and chub.
 15 You could talk for 5 minutes and chub. I think it's a
 16 rather subjective interpretation. I think if -- if a
 17 member has a bill that's voted unanimous out of
 18 committee and voted unanimous out of calendars and is
 19 about to be voted unanimous out of the floor and all of
 20 a sudden a member entertains five, six, seven minutes of
 21 unanticipated questions, I think someone can say, well,
 22 what is that about?
 23 And so I don't think that -- I don't think
 24 that if a member chooses to talk 10 minutes on a local
 25 bill, that's not necessarily chubbing. That could just

74

1 be killing a bill.
 2 Q. Okay. Whether or not you would describe the
 3 provision we just read as chubbing, this is a provision
 4 that certainly could be used to move a bill off a
 5 calendar?
 6 A. Of course.
 7 Q. And is it routinely used in that fashion?
 8 A. It has been, yes.
 9 Q. And that would be one of the tactics that one
 10 could use to delay consideration of a disfavored bill?
 11 A. I think that's -- I think that that is a way
 12 that you can defeat a bill in the local calendar. I
 13 guess that's what that bill is for.
 14 Q. Did you engage in chubbing of the House
 15 calendar in 2009?
 16 A. I would like to think that I defeated
 17 legislation in 2009. I wouldn't have -- I wouldn't have
 18 said that I chubbed on a bill, but I certainly would
 19 have said that I killed a bill on the rules.
 20 Q. And how in 2009 did you kill a bill on the
 21 rules?
 22 A. I've done it many different ways. But with
 23 regard to Section 6 -- or, excuse me, Rule 6, I have
 24 done it by acquiring signatures. I have done it by
 25 getting my colleagues to show with a raising of their

75

1 hand that there was an objection to a bill, and I've
 2 certainly done it by speaking and debating for
 3 10 minutes.
 4 Q. And would you have done any or all of those
 5 things in 2009?
 6 A. I probably did.
 7 Q. And what would have been the purpose of that
 8 exercise?
 9 A. You know, there are many different motivations.
 10 I think that passing legislation on the House floor is a
 11 full contact sport, and so, you know, it could have been
 12 personality driven. It could have been philosophical on
 13 legislation. Oftentimes, I mean, I think it's --
 14 there's a notoriety that every legislative session
 15 there's always a meltdown on a particular calendar,
 16 and -- you know, so I think every time that happens
 17 there's a different motivation.
 18 Q. Does MALC believe that chubbing is a legitimate
 19 means to kill a bill?
 20 A. Well, I don't know if MALC believes that, but I
 21 think the rules indicates it. So, you know, again, I
 22 mean, just the term chubbing is a term that's not in the
 23 rules. It's a term that, you know, people have given
 24 it. And so -- so I think it's an appropriate use of the
 25 rules. That's why it's there.

76

1 Q. Do you recall -- Do you recall in 2011 that
 2 there was an amendment to the House rules to limit the
 3 practice of chubbing?
 4 A. No.
 5 (Exhibit 6 marked.)
 6 Q. Do you recognize this as a portion of the House
 7 Journal?
 8 A. Yes, I do.
 9 Q. And this has been marked Exhibit 6. On the
 10 second page is the vote on House Resolution 4. At the
 11 bottom of the page, it says it's Record Vote No. 30, and
 12 there are 143 yays, zero nays and one present not
 13 voting.
 14 A. Yes. It looks like I was excused absent that
 15 day, but, yes, that is right.
 16 Q. Would MALC recognize that if 143 yays and zero
 17 nays were recorded on a vote, one can presume that was
 18 uncontroversial?
 19 A. I think so. You know, very proforma vote
 20 certainly. Sure.
 21 Q. Would there be any way a vote that was 143 to
 22 zero was something done for a discriminatory purpose?
 23 A. Sure. If the body wasn't informed as to what
 24 the purpose was at the time, if it was a deliberate
 25 attempt to have a discriminatory purpose and conceal it,

<p style="text-align: center;">77</p> <p>1 sure.</p> <p>2 Q. And how would it be concealed?</p> <p>3 A. Well, I -- I guess in reading -- the question</p> <p>4 you asked me, you know, could it be construed that there</p> <p>5 would be a discriminatory purpose, and I think, yes. I</p> <p>6 think that I'm relying on your word that that is a vote</p> <p>7 on the rules, I guess, or an amendment to the rules. I</p> <p>8 didn't see the actual amendment itself, but -- so I</p> <p>9 guess if I had an idea of what was amended or what that</p> <p>10 vote was referencing.</p> <p>11 Q. Let's talk a bit about a practice of amending a</p> <p>12 bill onto another bill. Have you ever amended a piece</p> <p>13 of legislation onto another bill that was under</p> <p>14 consideration in the full House?</p> <p>15 A. I have amended legislation on the floor of the</p> <p>16 House. I don't recall amending legislation with entire</p> <p>17 pieces of other legislation. I've made several</p> <p>18 amendments.</p> <p>19 Q. Well, how about with parts of other</p> <p>20 legislation?</p> <p>21 A. Sure. Absolutely.</p> <p>22 Q. And is that a common occurrence in the Texas</p> <p>23 House?</p> <p>24 A. It can be, yes.</p> <p>25 Q. What is the vote required to amend the bill</p>	<p style="text-align: center;">79</p> <p>1 substantive issues, for example, those that were added</p> <p>2 to bills as amendments, the decision of the Senate could</p> <p>3 be by simple majority and not by a two-thirds Senate</p> <p>4 vote?</p> <p>5 A. Could you explain that one more time?</p> <p>6 MR. ASTON: How about we have her read it</p> <p>7 back and then I'll try to clarify it?</p> <p>8 (Requested portion was read.)</p> <p>9 A. I'm not quite sure I understand the question.</p> <p>10 You are referring to bills that are amended -- Senate</p> <p>11 bills that are amended in the House, correct?</p> <p>12 Q. Correct. Okay. They go back to the Senate and</p> <p>13 then on a simple majority vote, they could concur in the</p> <p>14 changes?</p> <p>15 A. Correct. That could happen.</p> <p>16 Q. And so, for example, the Senate could pass a</p> <p>17 bill that says A, B and C. It goes to the House and</p> <p>18 they add D?</p> <p>19 A. Sure.</p> <p>20 Q. It goes back to the Senate on a simple majority</p> <p>21 vote, they could pass the bill with A, B, C and D?</p> <p>22 A. That's correct.</p> <p>23 Q. And so given the nature of the way the things</p> <p>24 work with amendments back and forth, back and forth</p> <p>25 during the, you know, fast pace of a legislative session</p>
<p style="text-align: center;">78</p> <p>1 before the full House on second reading?</p> <p>2 A. It's a majority vote of those present and</p> <p>3 voting.</p> <p>4 Q. Simple majority of those present and voting.</p> <p>5 A. Present and voting, yes.</p> <p>6 Q. Is that true for both House bills and Senate</p> <p>7 bills that are on the floor for second reading debate?</p> <p>8 A. Yes. For amendments, not on passage to</p> <p>9 engrossment or anything like that.</p> <p>10 Q. And if you amended a Senate bill that was under</p> <p>11 consideration on the House floor, you would only take a</p> <p>12 majority vote to amend that bill, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And if that bill ultimately passed in the House</p> <p>15 and went back over to the Senate, the full Senate would</p> <p>16 have to either agree with the changes made or they would</p> <p>17 have to go to conference, correct?</p> <p>18 A. Yes. Or they could -- they could let the bill</p> <p>19 die.</p> <p>20 Q. Do you know if a vote by the Senate to concur</p> <p>21 or to go to conference is decided by a simple majority</p> <p>22 of the members present?</p> <p>23 A. I'm not as familiar with Senate rules, but that</p> <p>24 sounds logical.</p> <p>25 Q. So would that suggest or indicate that on many</p>	<p style="text-align: center;">80</p> <p>1 is it perhaps common that a substantive piece of</p> <p>2 legislation is passed out of the Senate on that simple</p> <p>3 majority vote?</p> <p>4 A. I think it's possible. I don't know if I would</p> <p>5 go so far as to say it is common, but it is certainly</p> <p>6 possible. It certainly has happened.</p> <p>7 Q. Have you ever amended a Senate bill with a text</p> <p>8 of a House bill you authored?</p> <p>9 A. I believe I have amended Senate bills with</p> <p>10 amendments. Some of those could have been portions of</p> <p>11 legislation that I've authored or it could have been</p> <p>12 ideas that were newly drawn and drafted and amended on</p> <p>13 the floor of the House.</p> <p>14 (Exhibit 7 marked.)</p> <p>15 Q. Do you recall Senate Bill 1811 from the 2011</p> <p>16 session?</p> <p>17 A. I don't. It looks like this is for</p> <p>18 unemployment benefits or victims of sexual assault.</p> <p>19 Q. Does this amendment look familiar to you?</p> <p>20 A. The language of it certainly does, yes.</p> <p>21 Q. Where do you recognize it from?</p> <p>22 A. I had legislation that dealt with providing</p> <p>23 unemployment compensation to victims of sexual assault.</p> <p>24 Q. Do you think that was House Bill 2755?</p> <p>25 A. It could have been, yes.</p>

85

1 those either discussions in terms of having those
2 communications themselves or -- or directing us on what
3 would be the best approach to do that.

4 Q. Onto Senate Bill 14. Of the offered
5 amendments, was there any of them that if accepted would
6 have caused MALC to support passage of this photo ID
7 bill?

8 A. I think that that answer runs the risk of -- of
9 bringing up conversations with people that you've asked
10 me not to refer to.

11 Q. Did you offer any amendments to Senate Bill 14?

12 A. I did.

13 Q. How many?

14 A. Not quite sure. I know -- I know at least one
15 that I can think of right now.

16 Q. What was that amendment?

17 A. I believe it was an amendment that would allow
18 people like you to be able to vote with your AG issued
19 ID, state employees. I believe that I authored that
20 amendment. So that -- that's -- that's the one
21 amendment that does come to mind.

22 Q. Had that amendment passed would that have
23 changed your views on Senate Bill 14 ultimately?

24 A. I think in that alone, probably not, but I
25 think that there was definitely some goals and

86

1 objectives that were worth working towards that would
2 have made the bill appear to be more inclusive.

3 MR. ASTON: Could we go off-the-record for
4 a couple of minutes?

5 (Recess from 12:16 p.m. to 12:29 p.m.)

6 Q. (BY MR. ASTON) When did MALC first hear about
7 this lawsuit?

8 A. I imagine our awareness was heightened right
9 around the time Texas made its submission because I
10 don't believe that the -- I apologize because, you know,
11 redistricting and voter ID in terms of litigation were
12 right on the backs of each other, so it was around the
13 time there was an exchange of correspondence from the
14 Department of Justice asking for more information and
15 those sorts of things, and so I guess that would have
16 been some time after the bill finally passed and before
17 the declaratory judgment was filed.

18 Q. When you say "submission," are you referring to
19 the administrative preclearance submission to the
20 Department of Justice filed by the State?

21 A. Yes.

22 Q. And the transfer of information, the -- what --
23 you are referring to the times when the Department of
24 Justice asked --

25 A. For additional information.

87

1 Q. -- the State of Texas to provide more things
2 for it to review during its consideration of the bill.

3 A. Correct.

4 Q. Do you know how MALC first heard about the
5 lawsuit?

6 A. I imagine if we didn't find it from an
7 independent news source, we probably heard about it from
8 our lawyers.

9 Q. Did MALC hold a meeting after they heard that
10 the State of Texas had filed this lawsuit?

11 A. No. I don't believe that we were in session,
12 and so I think it's fair to say that we probably didn't
13 meet.

14 Q. Do you know when the lawsuit was filed?

15 A. The day, I don't know off the top of my head,
16 no.

17 Q. Do you know about when?

18 A. I imagine it would have been somewhere in the
19 in the late summer to fall of 2011.

20 Q. Was that the lawsuit you were referring to or
21 the preclearance submission to DOJ?

22 A. I imagine they were both within a proximity --
23 If I understand the submission having like a 60-day
24 requirement and in this instance there was some request
25 for additional documents. They may have stretched that

88

1 out a little bit, but at some point there was a
2 declaratory action filed, so I know that -- And, again,
3 I mean, you know, the redistricting litigation itself
4 took place right after Labor Day, so sometimes the
5 litigation and the corresponding dates all run together.

6 Q. You mentioned there was a 60-day window at DOJ.
7 Do you know how long this bill was pending at DOJ?

8 A. No.

9 Q. How long do you think would have been
10 reasonable for DOJ to take to consider this bill?

11 A. I think as long as the DOJ needed, provided
12 that there's not a hard number of days in Federal law.

13 Q. So they could delay the State of Texas
14 indefinitely from implementing a pass to sign law?

15 A. I think there's a reason why Texas is a covered
16 jurisdiction.

17 Q. So you don't think DOJ should have any deadline
18 as to when they have to give Texas an answer?

19 A. I think DOJ answers to Congress on that. So if
20 Congress set a number of days, then that should be the
21 number of days. If DOJ is charged with preclearance
22 authority for covered jurisdiction, then that's their
23 call.

24 Q. Has MALC intervened in other lawsuits before?

25 A. Other than this instant litigation, we

89

1 intervened in the District of Columbia on redistricting.
2 I believe 10 years ago we were a party to a
3 redistricting lawsuit. I don't know as a plaintiff or
4 an intervenor defendant. I think at that time the
5 preclearance sought by the State was administrative. I
6 know MALC had a role. I just don't know how official or
7 in what capacity that role was.

8 Q. But your understanding is MALC was involved in
9 the litigation over redistricting?

10 A. When I came onto the scene in 2001, yes.

11 Q. About 10 years ago?

12 A. Yes, sir.

13 Q. And do you have any recollection or any
14 knowledge of -- since this -- you know, since the
15 decennial census has passed, whether MALC got any
16 involved in any lawsuits that followed?

17 A. What decennial census?

18 Q. Whether it was 1990 or 1980.

19 A. My -- That predates me. My knowledge of
20 MALC -- By the time I was elected in 2007, at that time
21 my first experience of MALC advocacy was getting
22 involved in a redistricting lawsuit.

23 Q. So you believe that MALC has been involved in
24 at least three because you are aware of personally at
25 least three?

90

1 A. I was, yes. I was aware of three.

2 Q. MALC intervened in this suit with another
3 party, correct?

4 A. Yes.

5 Q. Who is that party?

6 A. I believe it's the NAACP.

7 Q. Is that the Texas State Conference of NAACP
8 Branches?

9 A. Yes.

10 Q. Did NAACP Branches and MALC meet during the
11 2011 legislative session? Did the organizations meet?

12 A. That I know of, no, although we worked
13 together.

14 Q. Do you know if you worked together in the 2000
15 session with respect to voting issues or voter ID?

16 A. I don't know that.

17 Q. Did the two groups meet before intervening in
18 this lawsuit?

19 A. I think to the extent that counsel for MALC
20 engaged in discussions with the Texas Branches, that's a
21 possibility. MALC itself did not meet with the Texas
22 Branches of NAACP.

23 Q. So the members did not. Your counsel might
24 have.

25 A. Correct.

91

1 Q. Has MALC members discussed the claims that you
2 are asserting in this suit with members of the NAACP?

3 A. I think the answer to that question you would
4 advise me not to answer it because of your objection or
5 your ground rules, I'm sorry, on the waivers.

6 Q. Have the two groups discussed Senate Bill 14?

7 A. I think that the answer requires me to violate
8 your housekeeping rule on not disclosing confirmation or
9 discussions involving people that are on the disclosure.

10 Q. Well, the content -- I don't know want to know
11 what was discussed, but whether there was a meeting.

12 A. I misunderstood. Could you tell me the
13 question again, please?

14 Q. Was there a meeting or a discussion between the
15 two groups?

16 A. The two groups being MALC --

17 Q. MALC and NAACP.

18 A. Oh, I don't believe so.

19 Q. Has MALC shared any information -- written
20 information with the NAACP group?

21 A. If we did it's been under -- it's been at the
22 counsel level, our legal counsel level.

23 Q. And would the same hold true for NAACP sharing
24 group information with MALC?

25 A. That I wouldn't know, but perhaps, yes.

92

1 Q. The two groups, do they assert the same claims
2 in this lawsuit?

3 A. As far as I know they are on the same sets of
4 pleadings and the lawyers represent both entities.

5 Q. They filed a joint answer, as you've indicated.

6 A. Every pleading I've seen has been done jointly,
7 yes.

8 Q. Why did MALC intervene in this lawsuit?

9 A. Well I, think it's very important, and so --
10 but, you know, for a variety of reasons. I think that,
11 you know, as I indicated earlier responses, you know,
12 this is sort of pierces the heart and the essence of our
13 caucus. We are a civil and social justice caucus. Many
14 people who have served MALC have been in a myriad of
15 battles for advocating on behalf of the minority
16 community, whether it be public education, access to
17 higher education, redistricting, and so I think that
18 there is a -- when you analyze the -- the discussion,
19 debate and the involvement of MALC members taking such a
20 very prominent position in debate and while there are
21 members of MALC who, you know, demonstrated a different
22 view by way of how they voted, there was very little to
23 no advocacy, save and except one or two members that was
24 diabolically in support of Senate Bill 14. It seemed to
25 me that when you balanced all of the equities, that it

93

1 made perfect sense for MALC to assert itself on behalf
 2 of the Latino community and on behalf of our
 3 constituents and members.
 4 Q. Any other reason you care to add or would
 5 that --
 6 A. You know --
 7 Q. Just don't want to cut you off.
 8 A. You are not cutting me off, but at the expense
 9 of giving you a narrative, I mean, there's -- this is --
 10 you know, these are very serious issues. This is not
 11 something that MALC wanted to do because we just had an
 12 overwhelming amount of resources to combat the State of
 13 Texas that has a blank check. It's very significant,
 14 despite the fact that, you know, we have a handful of
 15 lawyers, and we're, you know, lodging litigation against
 16 the largest law firm in the State of Texas. Very
 17 serious matters when it comes to the voting rights of
 18 the Latino community, and, frankly, if MALC didn't
 19 assert itself, from the looks of things, very few Latino
 20 advocacy groups did. I think at last check it was MALC
 21 and MALDEF involved in this.
 22 I think it's important for us to be in the
 23 discussion, and, most importantly, the members of MALC
 24 were -- you know, were there when all this was
 25 occurring, had been privy to the discussions that we can

94

1 talk about today and we can't talk about today. So I
 2 think the best evidence and the ability to provide the
 3 perspective that nobody else can, only MALC can do that,
 4 and so I think that it's -- we have a very appropriate
 5 place at the counsel table to present that perspective.
 6 Q. Have you personally spoken with anyone at the
 7 Department of Justice about Senate Bill 14?
 8 A. Not -- Well, the answer is yes, I have. I've
 9 been interviewed by the Department of Justice.
 10 Q. When did that occur?
 11 A. The actual date and time, I can't recall. It
 12 was -- It was after redistricting. It was on or about
 13 the time that we engaged as a party or sought a motion
 14 to intervene, and the communication was -- was vetted
 15 through our lawyer -- through our legal counsel in terms
 16 of having the conversation.
 17 Q. You called it an interview. Did they ask to
 18 speak to you in connection with their administrative
 19 work or within connection to this lawsuit?
 20 A. I don't know that. I know that it was a
 21 conversation about Senate Bill 14 and what I knew and
 22 what I could add to their perspective.
 23 Q. But you don't know if that occurred before or
 24 after they denied administrative preclearance.
 25 A. I don't know on recall. I would imagine that I

95

1 can give you a more specific, you know, time frame that
 2 might answer that for you, but maybe we can do that on a
 3 break if you want that.
 4 Q. Do you know if other members of MALC were
 5 similarly interviewed?
 6 A. I believe so, but I don't know. I spoke to
 7 them alone.
 8 Q. It was not a group interview, but you believe
 9 that others had the same opportunity?
 10 A. I believe that I was interviewed. I certainly
 11 answered the questions in terms of any other member that
 12 may have knowledge of relevant facts or access to
 13 information, and so I would suspect that there would
 14 have been some follow up on some of the conversations
 15 that I had.
 16 Q. Did that interview, conversation take place on
 17 one day?
 18 A. Yes, at one phone call.
 19 Q. It was by phone?
 20 A. Yes.
 21 Q. Texas filed this lawsuit on January 24, 2012.
 22 Do you know who this lawsuit was filed against?
 23 A. The Attorney General of the United States.
 24 January?
 25 Q. I'm sorry. January 24 of 2012. Since that

96

1 date, has MALC sent any letters or emails to the
 2 Department of Justice regarding Senate Bill 14?
 3 A. That I'm aware of, no. MALC wouldn't have done
 4 that.
 5 Q. Since that date has MALC sent any documents to
 6 the Department of Justice regarding Senate Bill 14?
 7 A. MALC has not. You know, again, I'm not trying
 8 to qualify, but if MALC did anything with regard to
 9 Senate Bill 14 after administrative submission or prior
 10 or after to any lawsuit, it would have been done at the
 11 behest of our legal counsel, and so I'm not aware of
 12 everything that counsel might have directed staff to
 13 do or -- but in those instances, if -- if MALC was
 14 anticipating litigation, then those decisions were being
 15 made by our lawyers.
 16 Q. And as we discussed before, to your knowledge
 17 unless those documents are privileged, they would have
 18 been turned over?
 19 A. I think that to my knowledge if those documents
 20 existed, they were given to our lawyers and I would hope
 21 that they would know what to do with them.
 22 Q. Does MALC contend that DOJ is inadequately
 23 representing its interests in this case?
 24 A. Does MALC contend that --
 25 Q. DOJ is inadequately representing its interests

97

1 in this case.

2 MR. GARZA: MALC lodges an objection to
3 that question as to Topic No. 2 on the notice of
4 deposition and in which we have stated from the
5 beginning of the deposition that relates to the
6 qualifications of MALC as an intervenor, a decision has
7 been made on intervention. The court has granted
8 intervention. MALC has filed legal pleadings through
9 its counsel regarding the issues involved in this
10 intervention, and it's irrelevant to this deposition --
11 the 30(b)(6) deposition. Having made that objection,
12 you may answer the question to the best of your
13 knowledge.

14 A. And, I'm sorry. Mr. Aston, the question again
15 is does MALC feel DOJ is inadequate in representing our
16 interests?

17 Q. Inadequately representing MALC's interests,
18 yes.

19 A. I think that MALC and DOJ share similar goals
20 and objectives. I think that MALC's approach in
21 strategy and perspective is certainly very unique, local
22 and very knowledge based, and what we know and what we
23 anticipate that we will present at trial will be a
24 perspective that no one else other than MALC can present
25 because of our uniqueness and being situated not only as

98

1 policymakers that are impacted by these decisions, but
2 the policymakers that were involved in the debate and
3 all of the nuances that occur when you're trying to
4 craft, you know, big controversial public policy.

5 So I think that, you know, with due to
6 respect to anybody who's litigating this case, there's
7 sometimes an advantage in terms of capacity and strategy
8 and approach when you know you are inside that brass
9 rail seeing everything happen real-time.

10 Q. Can MALC think at this time of anything that
11 DOJ has failed to do?

12 A. I think that if MALC has some inside
13 observations as to what DOJ should do, I imagine that
14 counsel for MALC is in a position to convey those
15 thoughts, and asking me personally as a representative
16 of MALC, I trust that my lawyers are giving me solid
17 reasonable advice and they are advocating and
18 positioning our case in the best way they know how.

19 Q. If the court denies preclearance of Senate Bill
20 14, will MALC seek attorney fees from the State of
21 Texas?

22 A. I guess it's a legal question I'll defer to
23 counsel on, and I'll certainly heed their advice.

24 Q. Does the MALC believe that the United States is
25 incapable of winning this case without MALC's

99

1 participation?

2 A. MALC believes that its involvement in this case
3 provide a very unique perspective, and to the extent
4 that we're able to work cooperatively with the DOJ in
5 presenting that case, it's our intention to do so.

6 Q. Does MALC contend that they could not have
7 provided that perspective via an amicus submission?

8 A. I think that, you know, counsel has counseled
9 me in understanding the benefits and the reasons why we
10 want to be present in the courtroom to examine and
11 cross-examination witnesses and present evidence.

12 Q. How many intervenors in addition to your group,
13 MALC and NAACP, are in this lawsuit?

14 A. I'd have to rely on the pleadings. I know I
15 saw MALDEF in there. I thought I saw a group called The
16 League of Young Voters. If you want me to look at the
17 pleading. It seems that there's a group represented by
18 Gerald Hebert. There's a group represented by John
19 Tanner. There is the ACLU. It looks like they're
20 represented. Counsel for the Texas Legislative Black
21 Caucus, League of Women Voters of Texas, The Justice
22 Seekers, Reverend Johnson, Reverence Wright. There
23 appears to be a few, you know, other intervenors. And
24 I'm, you know, Mi Familia Vota, MALDEF, so that's a fair
25 number of intervenors.

100

1 Q. Would you agree that it is more than 20?

2 A. I'll take your word for it. I just -- I didn't
3 really examine to know just how many there are, but I
4 see that there are more than MALC.

5 Q. Does MALC have any contention that that
6 collection of intervenors is not adequately representing
7 MALC's interest in this case?

8 A. I think MALC, you know, prefers to speak for
9 MALC, and as far as MALC's concern about our
10 involvement, I think one of the reasons I stated
11 previously, I don't have an opinion as to how other
12 groups view their role in the litigation.

13 Q. Does MALC contend that Senate Bill 14 has the
14 effect of denying or abridging Hispanics and Latinos'
15 right to vote on account of their race, color or
16 membership in a language minority group?

17 A. I believe it will.

18 Q. What is the basis for that contention?

19 A. Well, I think the evidence as I understand it
20 demonstrates that there are anywhere between 600 and
21 700,000 minorities that currently are registered to vote
22 that don't possess a driver's license. I think that --
23 that the -- a significant -- when you consider election
24 outcomes and you consider election participation rates
25 state-wide, that is a -- that is a large number of

101

1 Texans that would have additional hurdles in order to
2 vote.
3 Beyond that, I've struggled trying to
4 understand the basis by which there's even a public
5 policy concern for a need to have a voter identification
6 requirement, and I have yet to understand a proponent of
7 this legislation articulate just exactly what's going on
8 that we have to disenfranchise potentially 6 to 700,000
9 minority in order to achieve some sort of public policy
10 purpose.

11 Q. Before we move on, would there be anything else
12 you would like to add as far as evidence or facts that
13 you believe demonstrate a discriminatory effect of this
14 lawsuit?

15 A. Well, I mean, I think that the overwhelming
16 barrier to access -- I mean, it's -- it's more than -- I
17 mean, that you could look at this from multiple points
18 of view. I mean, you know, compliance with this law
19 would be a tremendous place -- a tremendous burden on
20 access. It's not just access to the polls, but it's
21 access to DPS to -- to conform to the dictates of the
22 law -- of the proposed law, and so I -- you know, I
23 surmise that you could probably look at this from a
24 number of different ways, and I guess when I -- when I
25 understand what the specific public policy objective --

102

1 like what was the -- what was the problem that we were
2 seeking to solve, I mean, I could probably form an
3 opinion, you know, in response to that policy objective.

4 Q. All right. Let's review a few of those things.

5 A. Sure.

6 Q. You mentioned 600 to 700,000 minorities bought
7 a driver's license. Do you know where that figure came
8 from?

9 A. I believe those are -- I've learned of those
10 numbers based on, I guess, the evaluation of discovery
11 material the State has produced in this litigation.

12 Q. And do you understand that to be 600 to 700,000
13 people with no form of photo ID or who lack a driver's
14 license issued by the State of Texas?

15 A. I think that to be fair, I think that it's
16 those number of people that are currently registered to
17 vote that are -- that the State of Texas is unable to
18 identify with its records as being people that are in
19 receipt of things like a driver's license, yes.

20 Q. That would be -- In your understanding that
21 would be people who Texas cannot identify within Texas's
22 own databases which would be the driver's license, the
23 concealed handgun databases?

24 A. Personal identification card.

25 Q. Personal identification card. It's people who

103

1 do not have those three forms?

2 A. I think I imagine that I would -- I would like
3 to think that the State is in the best position to
4 acquire and accumulate data on all of its Texans whether
5 it be at the DMV or the electrician who wants a license
6 to be an electrician. So whatever data -- And I'm not
7 privy -- I have not seen the data. I have not analyzed
8 the data. I have just had discussions with our lawyers
9 in terms of what the data is revealing, and so if there
10 is data that suggests that there's other metrics out
11 there from other State data, then I'm not aware of it.

12 Q. When we reviewed earlier Section 14 of Senate
13 Bill 14, the list of IDs that are acceptable, a number
14 of those are not State issued, correct?

15 A. They're Federal issued. I know of two that I
16 can recall without looking at the bill.

17 Q. Which two?

18 A. The passport and the military ID.

19 Q. If you want to turn to Page 10 of that exhibit,
20 Lines 5 and 6 note "A United States citizenship
21 certificate issued to the person that contains the
22 person's photograph." Do you know what that is?

23 A. I don't. I don't even know if I have one.

24 Where would I get one of those?

25 Q. But would you agree that the United States and

104

1 not Texas would be in the best position to know who has
2 a passport or who has a Federally issued military ID?

3 A. I think that's fair.

4 Q. So would you agree that -- that if Texas
5 determines within our own State issued database -- I'm
6 sorry -- within our own State databases as to our State
7 issued IDs, the number of folks without an ID is one
8 thing. It is not only possible, but likely that that is
9 an over-inclusive number as to the people who lack an ID
10 within Senate Bill 14?

11 A. I'm not sure I understand that question.

12 Q. Would you agree -- I'll try to rephrase. Would
13 you agree that just because someone does not have a
14 State issued photo ID, he or she might well have a
15 Federally issued photo ID that satisfies Senate Bill
16 14's requirements?

17 A. I think it's possible. I think it's -- You
18 know, I think it's very -- it's -- it's very
19 problematic, I think. I don't -- I'm trying to remember
20 what it took for me to obtain my passport, and I don't
21 think I would have had a lot of luck without a birth
22 certificate or driver's license or some sort of
23 identification.

24 Q. Suppose you are a member of the military and
25 you move around a lot and you have a driver's license

105

1 from your home state, but you're stationed here in
2 Texas. Would that be the sort of person who might well
3 have the Federally issued ID but not yet have a Texas
4 driver's license who might wish to quickly register to
5 vote?

6 A. I think an active soldier, yes. Correct.

7 Q. Suppose a Texas citizen who lives on the
8 border, would that be the sort of person who might have
9 a passport to cross freely back and forth between Texas
10 and Mexico, but who may not have a driver's license
11 because they live with a family member who does?

12 A. I'm not a -- I'm not aware of -- I mean, I
13 think that's possible. I'm not aware of that being a
14 requirement to cross the border and return back.

15 Q. A passport?

16 A. Right. I remember a time in my lifetime you
17 could go over with a birth certificate.

18 Q. Before we move on again, was there anything
19 else you wanted to add as to MALC's contention of
20 evidence of the allege discriminatory effect of this
21 bill as to Hispanics and Latinos?

22 A. You know, again, I mean, with the
23 disenfranchising to the degree to which I believe is a
24 very high number if we're looking at 600 to 700,000
25 minorities, you know, I think that the -- the rigors of

106

1 the recommendation certainly has an impact in areas
2 where there is not the access to DPS stations to conform
3 with the law or those that do have them, the ability by
4 which they're able to obtain those licenses, you know,
5 whether they work or rely on public transportation or
6 whether they have to travel multiple counties to arrive
7 at a location. I think that the overarching -- I think
8 when you start to list, you know, what you think is a
9 discriminatory effect, I cannot get past the impact this
10 has on access, and I think that that is one of the
11 bigger ones that I have spent a lot of time thinking
12 about.

13 Q. Does MALC contend that Senate Bill 14 will have
14 the effect of denying or abridging African-American's
15 right to vote on account of race, color or membership in
16 a language minority group?

17 A. I think our concern -- While our view is we're
18 the Mexican American Legislative Caucus, oftentimes our
19 viewpoint as a member of a minority group certainly has
20 a lot of commonality with a lot of other minority
21 groups. So the fact that we're standing together with
22 the Texas Branch of the NAACP tells me that we have a
23 lot in common with this issue. So if it's yes for MALC,
24 it's going to be yes for the NAACP who represents and
25 advocates on behalf of African Americans.

107

1 Q. And what the evidence would you have for the
2 contention as to African Americans?

3 A. Well, I think -- I would imagine that some of
4 the barriers that exist to access would also exist -- I
5 mean, to be very candid and frank with you, I was
6 prepared to testified as a representative of MALC, and
7 then we do have members of MALC that are
8 African-American, so I have heard perspectives from
9 people that are on a list that you, you know, have not
10 waived or have asserted privilege. But I think there
11 have been some very similar dialogue with respect to
12 access and barriers that exist to obtaining documents in
13 order to present themselves for a free ID or the
14 challenges that exist in order to, you know, simply walk
15 into a DPS station and obtain a license, and, frankly,
16 those who have been, you know, voting all their lives
17 that suddenly find themselves having to do things
18 differently for reasons that are, you know, yet to be
19 articulated.

20 Q. Does MALC contend that Senate Bill 14 will have
21 the effect of denying or abridging Asian Americans'
22 right to vote on account of race, color or membership in
23 a language minority group?

24 A. I think that MALC would defer the advocates on
25 behalf of the Asian community. I'm not prepared to

108

1 answer that question.

2 Q. Has MALC conducted any studies or any surveys
3 on the effect of Senate bill 14 on minority voters?

4 A. MALC has not in MALC's official capacity.

5 Q. Is MALC familiar with the polls -- the public
6 opinion polls regarding support for voter ID
7 legislation?

8 A. I know that I have been made aware of polls
9 that speak to that, yes.

10 Q. Is MALC aware of polls showing that the
11 majority of Texans support a photographic ID requirement
12 to vote regardless of their political affiliation.

13 A. I'm not aware, but I accept that viewpoint.

14 Q. Is MALC aware of polls showing that the
15 majority of Texans regardless of their race support a
16 photographic ID requirement to vote?

17 A. I'm not aware.

18 Q. And is MALC aware of polls showing that the
19 majority of Texans support a photographic ID requirement
20 to vote regardless of their membership in a language
21 minority?

22 A. I am not aware.

23 (Exhibit 9 marked.)

24 Q. Please take as long as you care to to review
25 Exhibit 9, which is the Expert Declaration of Daron R.

<p style="text-align: center;">109</p> <p>1 Shaw.</p> <p>2 A. It appears to be 48 pages. We may have to come</p> <p>3 back tomorrow if you really want me to take a look at</p> <p>4 this.</p> <p>5 Q. Again, take as long as you want to review this.</p> <p>6 I'm going to focus on Page 22 and then Page 28 and the</p> <p>7 three or four pages after that.</p> <p>8 A. I will try to indulge. This is not my area of</p> <p>9 expertise here. Page 22 and what else?</p> <p>10 Q. And then 28 through 33.</p> <p>11 A. May I write on this?</p> <p>12 Q. Certainly.</p> <p>13 A. I'll try my best.</p> <p>14 Q. On Page 22, the two paragraphs, Mr. Shaw is</p> <p>15 talking about he's conducted a survey, and he says,</p> <p>16 "Even if the size of the potentially affected population</p> <p>17 is quite small, the question remains whether any turnout</p> <p>18 affect will be disproportionately great among Hispanic</p> <p>19 voters. Looking at the general sample, it appears that</p> <p>20 amongst those who are identified as Hispanic, the</p> <p>21 possession of some form of ID as defined above is</p> <p>22 actually the same or higher than the rate among white</p> <p>23 respondents. Hispanic respondents didn't have any form</p> <p>24 of identification necessary for voting either 5 percent</p> <p>25 of the time unweighted or 6 percent of the time</p>	<p style="text-align: center;">111</p> <p>1 Do you have any reason to dispute -- Does MALC have any</p> <p>2 reason to dispute the survey data compiled by Dr. Shaw,</p> <p>3 any evidence to dispute that data?</p> <p>4 A. Well, first, I will say that MALC hasn't made</p> <p>5 inquiry, and so having said that, these kinds of</p> <p>6 discussions about looking at empirical evidence and data</p> <p>7 is what we entrust our legal counsel and experts that we</p> <p>8 work with to do that. I'm not an expert. I'm not even</p> <p>9 a doctor. I'm not a statistician.</p> <p>10 I read polls that say we should fully fund</p> <p>11 education, and we are at the bottom of the list in the</p> <p>12 country. And so I -- I know I -- recognize and</p> <p>13 understand the importance of surveys and opinions, but</p> <p>14 I -- I also know, you know, the devil's in the details</p> <p>15 in the sampling, the time when you poll, the questions</p> <p>16 you ask, the questions you didn't ask, but with respect</p> <p>17 to Dr. Shaw, my only opinion is he has an opinion, and</p> <p>18 if that is opinion is worth any wait, then I hope the</p> <p>19 State of Texas brings him as a witness to the trial so</p> <p>20 that our lawyers can cross-examine him.</p> <p>21 Q. Do you understand that this portion here was</p> <p>22 not meant to be an opinion poll?</p> <p>23 A. I'm seeing this for the first time, sir. It's</p> <p>24 a survey. It says survey at the top of Table 9. I</p> <p>25 don't know if this was done in conjunction with</p>
<p style="text-align: center;">110</p> <p>1 weighted, the same rate as for white respondents."</p> <p>2 "Additionally, when looking at the 600</p> <p>3 person Hispanic surname sample, even fewer respondents</p> <p>4 indicated not having any of the forms of identification</p> <p>5 necessary to vote between 2 percent unweighted and</p> <p>6 3 percent weighted."</p> <p>7 He goes on to write, "A large part of this</p> <p>8 positive discrepancy with respect to the ID possession</p> <p>9 is probably due to varying rates of passport possession.</p> <p>10 In the unweighted general sample, 45 percent of</p> <p>11 Hispanics state that they have passports compared to</p> <p>12 42 percent of white respondents, 46 percent compared</p> <p>13 with 42 percent in the weighted sample. Within the</p> <p>14 Hispanic surname sample, between 53 percent weighted and</p> <p>15 56 percent unweighted indicated possessing a valid</p> <p>16 passport."</p> <p>17 "Additionally, between 21 percent weighted</p> <p>18 and 22 percent unweighted of Hispanics in the general</p> <p>19 sample indicated possessing a citizenship certificate</p> <p>20 with their photograph, 32 percent and 35 percent</p> <p>21 respectively, in the Hispanic surname sample compared</p> <p>22 with only 10 percent and 12 percent of whites."</p> <p>23 We were discussing earlier whether or not</p> <p>24 it was possible that Hispanics and Latinos might have</p> <p>25 passports even if they don't have a driver's license.</p>	<p style="text-align: center;">112</p> <p>1 litigation. It doesn't have any -- It doesn't have a</p> <p>2 docket reference number. I don't know. I see this</p> <p>3 filed as a declaration, but I'm not sure this -- as an</p> <p>4 attachment, if this is done in anticipation of</p> <p>5 litigation. Is this something that was done that's just</p> <p>6 been, you know, made part of the litigation. But,</p> <p>7 again, you know, I mean, I think that's why we're in</p> <p>8 litigation to let the fact witnesses say what the facts</p> <p>9 are, let the opinion experts give the opinions and let</p> <p>10 the triers of facts decide what the facts are and how</p> <p>11 that shapes with the law.</p> <p>12 Q. If you are turn to Page 28, please.</p> <p>13 A. Sure.</p> <p>14 Q. 28 through the 33, collect a series of polls,</p> <p>15 some of them nationally, some done within the State of</p> <p>16 Texas as to popularity of voter ID legislation.</p> <p>17 Do you recall seeing any of these polls</p> <p>18 prior to a few minutes ago?</p> <p>19 A. No. This is the first time I've heard the name</p> <p>20 Dr. Shaw, and this is the first time I've seen, I'm</p> <p>21 presuming, Daron, his material.</p> <p>22 Q. Well, when you reviewed these or when you</p> <p>23 reviewed these, these are a collection of polls done by</p> <p>24 other folks, sources listed at the bottom of each poll.</p> <p>25 Do you recall seeing any of these before?</p>

113

1 A. No. I think that -- you know, that I would
 2 imagine that if these statistics existed around the time
 3 of the debate, I'm sure they were referenced in the
 4 debate somewhere. I'm sure there may have been flyers
 5 and talking points and newspaper articles written about
 6 them, but in terms of giving it the attention that I'm
 7 giving it right now, I'd say that I'm looking at this
 8 for the very first time.

9 Q. On Page 31 is a survey that's conducted in 2009
 10 in Texas, and the question is "Do you support or oppose
 11 voter ID legislation and would that be strongly or
 12 suggest somewhat?" 54 percent strongly support.
 13 17 percent somewhat support. 8 percent somewhat oppose.
 14 18 percent strongly oppose. And broken down further,
 15 whites strongly support 61, somewhat 17. Blacks
 16 strongly support 58 percent, somewhat support 17.
 17 Hispanics strongly support 44 percent, somewhat support
 18 15 percent. Done by party affiliation. Democrats
 19 strongly support 39 percent, somewhat support
 20 19 percent. Independents, 55 percent strongly support
 21 and 15 percent somewhat support, and Republicans,
 22 70 percent strongly support and 16 percent somewhat
 23 support.

24 And then on the next page, 32, there's a
 25 more recent study or survey conducted between

114

1 February 11 and February 17, 2011, once again, within
 2 Texas. The question was, "Do you agree or disagree with
 3 the idea that registered voters should be required to
 4 present a government issued photo ID at the polls before
 5 they can be allowed to vote?" 75 percent agree,
 6 17 percent disagreed, and then broken down, agreed,
 7 white, 80 percent, black, 63 percent, Hispanic, 68
 8 percent, and as far as party breakdown, 59 percent for
 9 Democrats, 70 percent independents, 92 percent
 10 Republicans, but there are a number of others here, but
 11 would MALC dispute that photo ID laws are widely
 12 supported in Texas?

13 A. Well, MALC would want some clarification to
 14 show what those statistics support, you know, and so,
 15 again, I'm looking at this for the very first time, and,
 16 I mean, if I read a question that says the Texas
 17 legislature recently considered legislation stating that
 18 people have to provide photo ID, I mean, I could be a
 19 respondent and think that's a college ID. I could be a
 20 respondent and think that that is a state employee ID.

21 I -- You know, I wonder what the
 22 respondents were thinking because they're not told that
 23 it's just a Texas driver's license or a passport or a
 24 certificate of citizenship to the United States. And
 25 so, I mean, I'd have those questions and I'd want to

115

1 know, you know, what the respondents do about that and
 2 if that would have changed their opinion. Again,
 3 looking at it for 5 minutes, that's the first thinking
 4 that comes to mind, and I think members of MALC would be
 5 thinking the same thing.

6 Looking at your example on Page 32 or
 7 Dr. Shaw's example on Page 32 about, you know, some
 8 people argue that requiring registered voters to present
 9 government issued photo IDs at polls reduces voter
 10 fraud. I wonder if the respondents knew that if you
 11 combine the elections of 2008 and 2010, 13 million votes
 12 were cast, and of those 13 million votes, there were
 13 only four allegations of voter fraud presented to the
 14 Attorney General, and of those four allegations of voter
 15 fraud, there was only one indictment. So if the
 16 respondents knew that, I wonder what they would think
 17 about photo ID having any impact on voter fraud that
 18 apparently hadn't existed in the 2008 and 2010 election.

19 And so I think a respondent, given that
 20 opportunity to weigh that fact or that argument, would
 21 say, well, why are we doing this at the risk of 600 to
 22 700,000 minorities not being given an opportunity to
 23 vote or making it harder for them to vote because they
 24 don't possess a form of acceptable identification.

25 So I think, you know, again, I hope

116

1 Dr. Shaw can answer that because I think that that's
 2 what I'd like our MALC counsel to ask them because I
 3 think it's important and relevant and would certainly
 4 have an impact on how I would answer a question.

5 Q. Does MALC believe that elderly voters are more
 6 likely than the average voter to lack a form of
 7 identification required by Senate Bill 14?

8 A. I think MALC -- MALC is inclined to believe
 9 what data produced by the state is revealing is that 600
 10 to 700,000 minorities are registered to vote that lack a
 11 driver's license, and I would imagine within that sample
 12 of 600 to 700,000 Texans, there would be some seniors in
 13 there. To the extent is there a scientific precise
 14 correlation, I can't tell you that. I would hope
 15 that -- I would hope that our MALC lawyers and experts
 16 working on behalf of MALC or with MALC or in conjunction
 17 with MALC would have some more precise opinions on that.

18 Q. Does MALC contend that indigent voters are more
 19 likely than the average voter to lack a form of
 20 identification required by Senate Bill 14?

21 A. I think that -- I think one could argue that
 22 there's a correlation in transient and indigent people
 23 not having access to things that people would have who
 24 weren't transient and indigent.

25 Q. Does MALC contend that disabled voters are more

117

1 likely than the average voter to lack a form of
2 education required by Senate Bill 14?
3 A. Again, I would think that -- that Texans that
4 have limitations due to disabilities are probably not as
5 mobile and can access or endure some of the impediments
6 to conforming to the dictates of the law, particularly
7 if they have to present themselves to DPS locations that
8 aren't in their communities. Certainly I think that
9 would be a challenge.

10 Q. Does MALC contend that rural voters are more
11 likely than the average voter to lack a form of
12 identification required by Senate Bill 14?

13 A. That I think I have more of an opinion of
14 because, as I mentioned to you, MALC is almost
15 state-wide now. We have members coming in from every
16 pocket of the state, and I know of members whose
17 districts, you know, are larger than many northeastern
18 states, and I've been told directly from some of those
19 members, one of them who's on the list of approved
20 members you can discuss, that talk about the round-trip
21 that would be required of a citizen from one part of
22 west Texas to drive to a DPS facility to get a license
23 or get an identification card to vote.

24 And I think when you ask somebody, you
25 know, I want you to vote, but I want you to make a

118

1 200-mile round-trip to go get in compliance with Senate
2 Bill 14, I think that puts an impediment. Of course it
3 does.

4 Q. Does MALC contend that young voters are more
5 likely than the average voter to present a lack of
6 identification required by Senate Bill 14?

7 A. I think, again, to the extent of the
8 demonstrated data that suggests 600 to 700,000
9 minorities could be impacted by this, I would imagine if
10 you sample that with the demographic trajectory of
11 minorities in Texas than being relatively younger than
12 average -- being younger and minority more likely, most
13 likely Latino, I think, yes, they probably could be
14 disproportionately impacted than their peers or those
15 who are not in their demographic area.

16 Q. What evidence do you have that young voters are
17 less likely than voters who are 30 or 40 or 50 that they
18 don't --

19 A. I'm sorry.

20 Q. That they are less likely to currently possess
21 photo IDs.

22 A. I mean, I'm operating again under the parameter
23 that there are 600 to 700,000 minorities that could be
24 impacted. I think demography and simple math tells us
25 that when you can look at the course of the last decade

119

1 and see that Texas grew by 4 million Texans and
2 89 percent of those Texans were minority and if we know
3 that there is a state data point from our demographer
4 that says minorities and in particular, Latinos, are
5 younger than their Anglo counterparts, I think one needs
6 to do a little bit more work. But I think on a hunch
7 and gut instinct, that would tell me that there are
8 probably more younger minority Texans that could
9 potentially be minority and fall within that
10 classification of 600 to 700,000 folks that might be
11 impacted.

12 So it's just -- kind of just a hunch of
13 what I know about the State and what I know about its
14 people and what I know about who's, you know, not
15 accounted for in Senate Bill 14.

16 MR. ASTON: Go off the record for a
17 minute.

18 (Recess from 1:29 p.m. to 1:42 p.m.)

19 Q. (BY MR. ASTON) Okay. Does MALC know how many
20 Texas registered voters lack one of the forms of photo
21 ID that is required by Senate Bill 14? We talked a bit
22 about the 600 to 700,000 number. Does MALC have any
23 other evidence that might get to this figure?

24 A. To the six to 700,000?

25 Q. No. What is the actual number of Texans

120

1 without one of the forms of photo ID.

2 A. I don't believe I -- In fairness, I don't
3 believe I ever asked that question, but I know that
4 I've not seen anything that would suggest we know what
5 the full and final number is of Texans who lack any of
6 the forms of ID.

7 Q. Can MALC identify any Texas registered voter
8 who does not have one of the types of photo ID
9 requirements in Senate Bill 14?

10 A. Well, you know I, was joking with someone the
11 other day, and I represented this guy the other day who
12 has a -- who had a Mississippi violation of the law and
13 one of the consequences was his license was confiscated,
14 so I asked him whether or not he could vote with a valid
15 ID. Now, I didn't ask him if he had a national birth
16 certificate, but I asked him if he had a passport and he
17 doesn't. I asked him if he had a concealed handgun
18 license and he doesn't. And -- And the license he had
19 was taken away from him. So, you know, I guess, you
20 know, to the extent that I'm doing the arm chair survey,
21 you know, for the State of Texas, I mean, I was -- that
22 could be one.

23 Q. Do you know any others?

24 A. Well, I think that those that are similarly
25 situated, but, again, I have not made it my -- my -- I

121

1 have not taken responsibility to find that out, but I
 2 think it's just a matter of having a casual conversation
 3 from three blocks to the courthouse, I think that there
 4 are probably other people that are impacted similarly.
 5 Q. But MALC can't identify by name any of these
 6 people.
 7 A. I don't think MALC's attempted to, but if --
 8 if -- if the methodology could be that simple, I suppose
 9 we could. And, you know, just to be fair to MALC, I
 10 think that, you know, the ultimate burden lies with the
 11 State. We would expect the State to do that and to tell
 12 us because -- because we wouldn't pass legislation that
 13 would have that kind of impact without doing our due
 14 diligence, I wouldn't think.
 15 Q. If the State is not in the best position to
 16 determine who has a passport or a military ID or the
 17 citizenship certificate, what is the legislature to do
 18 with respect to those documents in MALC's eyes?
 19 A. Well, there used to be a time when the State of
 20 Texas had the Office of State and Federal Relations
 21 where we had a Federal advocate that would run a lot of
 22 these traps, and if I'm not mistaken, our current
 23 governor said that we had, you know, two Republican
 24 United States senators and we had Republicans from
 25 corner to corner of the Texas House of Representatives,

122

1 and we could get anything we want at any time
 2 essentially.
 3 So my sense would be that the State of
 4 Texas was really looking for this information from
 5 Federal authorities and for some reason cannot seem to
 6 convince, persuade or order a court to have a dialogue
 7 with Federal agencies that we would get our Federal
 8 representatives involved, I would think.
 9 And so, you know, I know in the context of
 10 redistricting, if you will, I mean, you certainly saw
 11 that in the discovery that there was significant
 12 involvement from members of United States Congress, if
 13 not all of them at some point. So I -- I would say that
 14 if the State of Texas knew how to communicate with
 15 members of Congress for redistricting, then you had to
 16 do it for voter ID.
 17 Q. In addition to the perhaps gentleman you were
 18 speaking of a few minutes ago who had his license
 19 confiscated, do you personally know of other Texas
 20 registered voters who do not possess one of the forms of
 21 photo ID listed in Senate Bill 14?
 22 A. You know, I've been -- I've been corrected that
 23 I -- You know, I have a mother who has Parkinson's
 24 Disease. She doesn't drive. Until very recently, I
 25 didn't think she had a driver's license because she

123

1 medically is not able to drive, but lo and behold she
 2 does, and I can imagine when it expires, which I think
 3 is in the very near future, we have no compelling reason
 4 to renew her driver's license because her doctors would
 5 probably have a problem with it, number one, and number
 6 two, she hasn't driven in two years. At the age of 73,
 7 I don't see her getting a passport any time soon.
 8 Certainly hope that she doesn't go out and get a
 9 concealed handgun license. She may mistake me for an
 10 intruder one day when I come over to visit.
 11 So I worry about her. I know that I have
 12 the manner and means and the resources and the staff and
 13 employees that work in my law office that could cover
 14 for me so that I can make it my obligation to see that
 15 she complies, but I think about people who do this on a
 16 bus. I think about people who do this and have 8 to 5
 17 jobs and don't have bosses or have bosses that aren't as
 18 flexible as me. I worry about people who work all week
 19 and who are off on Saturdays and Sundays and don't have
 20 a open DPS office, and I think in the wake of Homeland
 21 Security being what it is, if you cannot board a plane
 22 without a driver's license, then I imagine you can't get
 23 a passport without a driver's license. I don't know
 24 that, but I -- it's just my speculation.
 25 So I worry about people that are situated

124

1 like my mother, and I think that, you know, she's not
 2 out of the ordinary. I think there are many Texans just
 3 like her, and I wonder what they're doing, and if it
 4 wasn't for me, I would wonder who would help my mother,
 5 so I worry about people who don't have that kind of
 6 support system.
 7 Q. Does the Federal policy that requires you to
 8 present a government issued photo ID when you choose to
 9 board an airplane, is that discriminatory?
 10 A. I think that there is a distinction between
 11 rights and privileges, and I think that while there may
 12 be -- you know, buying a beer is not a constitutional
 13 right, you know, I think you have a right to be free,
 14 and we have all these liberties that we're all defining
 15 and reminding people that we have, but, you know, I
 16 think the right to vote is a very special and unique and
 17 when the government tries to impose a duty on a
 18 privilege to vote, I see that different from, you know,
 19 requiring them to present themselves to board a plane
 20 because you don't have to travel by plane to get to
 21 places you want to go to these days.
 22 Q. But do you see the two activities as different,
 23 voting versus buying a beer or voting versus taking a
 24 plane? But is the requirement that says we want to know
 25 who you are via a photo ID before you do these things,

125

1 is it discriminatory in one but not the others?

2 A. I think when you -- when you make it clear that
3 you are limiting the type and scope of identification
4 that you are willing to accept, I think you start
5 picking winners and losers, yes.

6 Q. So they are all discriminatory -- Is it your
7 contention that in all three instances it's
8 discriminatory, but it's worse for voting or it's only
9 discriminatory when it's voting?

10 A. I know that -- I know that the United States
11 Constitution gives me the right to vote, okay? It also
12 gives me the right to be free, the freedom to get on an
13 airplane if I wanted to and not have to get permission
14 from the government. I get that.

15 But express rights that I have to vote and
16 participate are democracy, and when the government tells
17 me how I'm going to participate in my democracy, I think
18 it's much different. And so if the government feels a
19 compelling need or interest or public policy concern
20 that, again, is yet to be articulated, when that is
21 demonstrated to me, I think we are going to adopt a
22 manner and means by which we'll try to accommodate
23 people rather than exclude those.

24 And so the suggestive -- the subjective
25 intent of the authors of sponsors of this bill to limit

126

1 the list of acceptable forms of identification has
2 clearly demonstrated that 600 to 700,000 people are not
3 going to be in the same position they were in -- in the
4 previous election, and I don't think we gave a lot of
5 thought into accommodating those folks. And I think
6 that there was, you know, potential that you could have
7 had a win-win, but that was never the design and the
8 desire of the author of the bill, and the language
9 speaks for itself.

10 Q. Does MALC know how many Texas registered voters
11 lack the underlying documents necessary to get a State
12 issued photo ID such as an election identification
13 certificate?

14 A. We would not. I'm not aware of MALC making
15 inquiries, no.

16 Q. So MALC can't identify the Texans by name?

17 A. No.

18 Q. They don't know who any of these people are
19 that lack those documents?

20 A. Well, I think MALC in terms of the
21 organization -- I mean, I think MALC does not know.
22 MALC members have some insights on that perhaps.
23 Perhaps they do.

24 Q. But you do not?

25 A. I do not.

127

1 Q. Would MALC agree that people who have the
2 ability and the means to obtain a photo ID but choose
3 not to would not have this right denied or abridged by
4 Senate Bill 14?

5 A. I -- I'm not -- I'm not sure that -- that I
6 could say that.

7 Q. Yes?

8 A. I guess I could take a defeatist position and
9 let that apathy kick in and say just like what the
10 number of people said last night on the 10 o'clock news
11 here on the ABC affiliate after the basketball game that
12 showed a B role of a line of people standing outside the
13 DPS office for one to two hours who then finally get
14 their turn in line and say, oh, you have the wrong
15 documents, and so they have to leave and come back the
16 next day and sit another one to two hours without a
17 glass of water or a courtesy employee telling them
18 here's what you need, here's what you don't need. Let
19 me make sure you have everything before you stand in
20 this line.

21 I think somebody could say you know what,
22 you know, this isn't worth it. I can't do this. My job
23 won't let me do this. My children get out of school,
24 and I need to be home for them. I need to make them
25 dinner. You know, I think that citizens are going to

128

1 have a number of reasons and even one reason is one more
2 than what they had in the last election.

3 And so, quite frankly, I think that
4 because they don't exercise their ability to conform to
5 the dictates of Senate Bill 14 doesn't mean that they
6 are no longer impacted. They may be impacted and that
7 apathy speaks for itself, and so it's a -- it's a
8 wonderful news story, if you hadn't seen it. But we're
9 140 days out from a national election and there are
10 people standing in 100-degree weather trying to get a
11 driver's license. Can you imagine what the line's going
12 to look like when this -- should this become pretty
13 clear when people have to conform before the November
14 election? It could be chaos, particularly when a city
15 as large as San Antonio I think has three facilities and
16 the fourth one is in construction and won't be online
17 prior to the election?

18 We're the second largest city in the
19 state, so I wonder what it's like to be in a smaller
20 community. If that's -- If this is the San Antonio
21 experience, what's it like for people in rural and, you
22 know, communities along the border that -- that don't
23 have this.

24 Q. Would MALC agree that the requirement that one
25 must register prior to an election day does not deny or

129

1 abridge the right to vote?
 2 A. Register to vote?
 3 Q. Yes, sir.
 4 A. The current requirement in Texas to register,
 5 we don't have same day registration.
 6 Q. Would MALC agree that that does not deny or
 7 abridge one's right to vote?
 8 A. I think it's fair saying that individual
 9 members of MALC in this piece of legislation advocated
 10 as a means of compromise to provide for same day
 11 registration as a way of making the legislation
 12 palatable, and it was rejected, so if, you know, maybe
 13 there are some members of MALC that would have a
 14 different view. I -- You know, the purpose of me being
 15 here is on the bill itself and what it does and not what
 16 it could have done, you know. So I -- You know, I don't
 17 dispute the fact that you have to register to vote, but
 18 I think that as a general notion the easier we make it
 19 for people to vote, the more participation we have in
 20 the electoral process.
 21 Q. A few minutes ago before you started looking at
 22 the polls in Dr. Shaw's report, you read the bit about
 23 passports and citizenship certificates. Again, it's on
 24 Page 22.
 25 If it's the case that Hispanics and

130

1 Latinos do have passports at a higher rate than an
 2 Anglos, would MALC concede that at a minimum that
 3 lessens the burden?
 4 A. Not sure that I'm qualified to answer that. I
 5 mean, I think -- I think when, you know, 41 and
 6 45 percent of Hispanics say they don't have one, I mean,
 7 that's what we need to be concerned about. You know, if
 8 they don't have a passport, then arguably they also
 9 don't have a driver's license. That's -- You know,
 10 that's going to be a tough obstacle to overcome without
 11 having to go out and get an additional form of
 12 identification, but -- so, I mean, I don't think MALC
 13 can concede or -- and, frankly, can't even give an
 14 accurate dispute to the findings because we don't have
 15 the basis, we don't have the sample, the cross tabs, all
 16 the things you want to see in a poll.
 17 I mean, the top sheets are great to see
 18 the numbers, but it's really the methodology that
 19 matters, and there's so much that goes into the art of
 20 scientific polling and sampling that it's specialized
 21 fields, and I'm not the person to opine on -- on what
 22 these statistics stand for.
 23 Q. But if it were true that Hispanics and Latinos
 24 do in fact have passports, citizenship certificates with
 25 photos at a higher rate, might that change your view of

131

1 Senate Bill 14?
 2 A. If Latinos -- If it were true that Latinos
 3 had -- higher percent of them had passports.
 4 Q. Or the citizenship certificates than Anglos
 5 such that there was no disparity as to --
 6 A. With Anglos.
 7 Q. -- the Anglos as to who does not currently
 8 possess a photo ID, would that change your mind on
 9 Senate Bill 14?
 10 A. I think that that is relevant. I think it's a
 11 important consideration. I'd like to see those
 12 disparities as they exist to college identification
 13 cards or state employee photo identification cards. I
 14 mean, I want to be able to weigh that relative to other
 15 forms of photo identification that minorities may be in
 16 possession of.
 17 You know, I'm from San Antonio, and I read
 18 a great article here about the -- our public transit
 19 system here is, you know, disproportionate. Our
 20 ridership is minority. If it were true that you had to
 21 have a photo ID to ride the bus, I'd wonder -- I'd like
 22 to see that statistic measure up to a passport when it
 23 came to being eligible to vote. Public transit is a
 24 quasi-governmental entity, and I'd love to see what that
 25 number is relative to passports or driver's licenses.

132

1 Q. I'd like to talk next about the purpose behind
 2 Senate Bill 14. Does MALC contend that Senate Bill 14
 3 was enacted with a discriminatory purpose?
 4 A. You know, the short answer's yes, I think.
 5 Q. I'm sorry. Did you see yes?
 6 A. The short answer is yes.
 7 Q. What is the basis for that contention?
 8 A. Understand I find that, you know, the rationale
 9 remains elusive. You know, I was very active in the
 10 2011 debate. I talked to many members, and in my
 11 conversations, you know, I -- the different rationales
 12 were why we have to have this, and, you know -- and if
 13 I'm told that, you know, the purpose of this legislation
 14 is to combat voter fraud, you know, I'm reminded by
 15 numbers, you know, that I've reviewed directly from the
 16 Attorney General that suggests there's not a lot of that
 17 going on that -- that Senate Bill 14 would fix. I'm
 18 acutely aware of the discussions and floor proceedings
 19 that, you know, we have higher instances voter fraud and
 20 inappropriate behavior through the use of mail ballots
 21 and poll worker activity. None of that is addressed in
 22 Senate Bill 14.
 23 I think that when you start looking at
 24 this subject matter from a 10,000-foot view, you see
 25 once upon a time the committee on elections, a chairman

133

1 is one of the most outspoken critics of minorities and,
 2 in particular, Latin American immigrants. We chair the
 3 elections committee. We worked very hard in 2007 to
 4 make sure that bill came out. And I apologize. If no
 5 bill came out, I get confused because this is something
 6 that I've seen in '07, '09, '11, '05 and at some
 7 juncture, and I know that he has some very hardened
 8 views about minorities.
 9 And you sort of come full circle when you
 10 see one of the nicest most personable members of the
 11 legislature, Patricia Harless, author of the 2011 voter
 12 identification bill, and -- and she doesn't have those
 13 outward manifestations of how she views or perceives
 14 Hispanics and Latin Americans, particularly immigrants,
 15 but you can look on her website and, you know, she
 16 identifies voter identification as a means of
 17 immigration policy. Anybody who thinks voter
 18 identification is appropriate immigration policy, I have
 19 to ask you what that purpose was. Is the purpose for
 20 voting or is the purpose to curve illegal immigration.
 21 The only immigrants that I know of that Texas seems to
 22 talk an awful lot about are ones that look like me, and
 23 so I wonder what -- again, what the purpose was.
 24 And on a final point, I -- you know, I
 25 look at the -- You know I appreciated your earlier

134

1 display of knowledge of the House Journal and how it
 2 works and your knowledge of the rules, and I think it's
 3 also fair to recognize the -- the departures from our
 4 legislative procedures that were done to simply
 5 facilitate only one bill, which is this bill. And so if
 6 the motive was legitimate and neutral, and we don't
 7 intend to impact anybody -- single out anybody because
 8 of their race or origin, then we didn't have to do
 9 legislative somersaults to pass voter ID. It should
 10 have been able to pass on its own merit or die on its
 11 own merit. That's not the case here.
 12 Q. Was there any other evidence you wanted to
 13 discuss as to the purpose of Senate Bill 14?
 14 A. I mean, those seem to be the most visible in my
 15 mind.
 16 Q. So that's what MALC relies on to make its claim
 17 that there was a discriminatory purpose behind Senate
 18 Bill 14, that's the evidence?
 19 A. I think that that is the evidence that seems to
 20 be the most weighing on my mind, yes.
 21 Q. You touched a bit on voter fraud as being a
 22 purpose articulated -- that was articulated, I assume,
 23 on the floor and assume it was articulated in public
 24 statements by any number of members who were supporting
 25 Senate Bill 148; is that correct?

135

1 A. Yes. And I thought I saw a reference to it in
 2 Dr. Shaw's own publication.
 3 Q. Does MALC contend that preventing voter fraud
 4 was not a purpose of Senate Bill 14?
 5 A. I think that it's not a proven purpose. I
 6 think it may have been a red-herring. It may have been
 7 a talking point. It may have been sort of a -- you
 8 know, a misdirection, but I'm not aware -- I think in
 9 the debate it was over and over again to ask the authors
 10 and proponents of the bill to articulate to me what
 11 exactly is the fraud that we're seeking to eliminate.
 12 There were proposals offered by members,
 13 and I venture to say they may have been MALC members
 14 that said if there's voter fraud going on, throw them in
 15 jail. Let's help you. Let's make it a felony where
 16 there's a substantial sum of years in prison. Let's do
 17 that. If that's what you want to do, we'll help you do
 18 that. You won't see that.
 19 There was acknowledgment by -- You know, I
 20 remember a debate between two members of MALC,
 21 Representative Aliseda and Representative Anchia, and I
 22 debated Representative Aliseda on a newscast. He said
 23 we know there's problems with mail ballots, and we're
 24 going to do that next. Didn't happen. I mean, if the
 25 focus was to attack the fraud, well, the fraud I know

136

1 of, the fraud that's being tracked by the Attorney
 2 General, like I said, one indictment out of 13 million
 3 votes on voter fraud for voter impersonation. I have to
 4 question what the purpose was.
 5 Q. Earlier you discussed the mail-in ballot fraud,
 6 and I think poll worker fraud are two things you
 7 mentioned. Does MALC acknowledge that there is voter
 8 fraud in Texas?
 9 A. As a general concept or specific to --
 10 Q. That is happening in Texas and it has happened
 11 in the recent past, some of those sorts of fraud that
 12 you discussed.
 13 A. Well, yes, and not -- I think that there's a --
 14 there is a higher instance of other types of fraud than
 15 impersonating a voter, yes.
 16 Q. Do you know how high?
 17 A. I don't.
 18 Q. Would MALC agree that going after mail-in
 19 ballot fraud is something the Texas legislature should
 20 be doing?
 21 A. I think MALC agrees, and I think the Texas
 22 legislature has. I remember a reform in the early
 23 2000's. I thought at least it was attempted in the
 24 House deal with the handling of mail-in ballots and
 25 people associated with that.

137

1 Q. Does MALC contend that the Texas legislature
2 intended to harm poor people by passing Senate Bill 14?
3 A. I don't know if the legislature intended to
4 harm them, but I think the legislature knew that they
5 were excluding them. If they are someone who would link
6 exclusion to a harm, then, yes, I think they knew that,
7 but I think that -- Again, I mean if the -- if the data
8 point was protecting the integrity of a ballot box and
9 nobody ever getting a real view of what was exactly
10 going on at the ballot box that required an overhaul of
11 our voter identification processes, you know, I'd say
12 that there are some people excluded by it as a result of
13 these policy choices, and that's harmful. At least it's
14 harmful to the person who no longer has the luxury of
15 voting how they did in the last election.
16 Q. Does MALC contend that the Texas legislature
17 intended to harm young people by passing Senate Bill 14?
18 A. I think they intended to exclude.
19 Q. What's the basis for that contention?
20 A. Well, again, I'm operating off my notion of
21 demography, the notion that minorities are --
22 particularly Latinos are younger in the state-wide
23 population. And I am being told that 600 to 700,000
24 minorities don't possess a driver's license, and so I --
25 I think we know we're excluding, and when there was a

138

1 sensible alternative to allow people to vote with
2 college identification cards, I think we could have
3 captured many of those folks who were potentially on the
4 list of excluded, and there was a cognizant choice to
5 exclude them by way of a rejection of that amendment.
6 Q. Do you know if the requirements to obtain a
7 student ID are as rigorous as the requirements to obtain
8 a driver's license or election identification
9 certificate or a passport?
10 A. I think that the State is in the best and only
11 position to dictate what those requirements be, and so
12 if the State as a matter of policy choice didn't think
13 they were rigorous enough, then we could have changed
14 that. We would probably do it with rule making. You
15 know, so Texas went through litigation just to change
16 the form of its driver's license. I'm certainly very
17 cognizant of the fact that we could do this with college
18 IDs, state employees IDs, hunting licenses, fishing
19 licenses, electrician licenses. Everything that we
20 licensed, we could make the application requirements
21 more rigorous if we wanted to use those as a list of
22 approved identification cards in order to vote, but that
23 wasn't the case.
24 Q. Does MALC contend that the Texas legislature
25 intended to harm elderly voters by passing Senate Bill

139

1 14?
2 A. I think that when -- when the proponents of
3 Senate Bill 14 had the choice to vote on amendments that
4 would have excluded seniors from having to meet the
5 requirements of Senate Bill 14, I think they knew they
6 were excluding seniors, and they had the opportunity to
7 give them a hold harmless and --
8 Q. Give them a what?
9 A. Hold harmless. In other words, to exclude
10 senior citizens from the requirements of Senate Bill 14.
11 There was an actual amendment to exempt them, and it was
12 rejected. I haven't compared the votes, but I'm sure
13 there's a high correlation of people who voted to pass
14 Senate Bill 14, and those very same people are the ones
15 that projected the alternative to exempt the elderly. I
16 think that we were harming them. I think we knew that
17 we were going to exclude some of them. I think it's
18 harmful to the senior who's impacted.
19 Q. The amendment that did not pass in that regard,
20 what was the age requirement for that; do you recall?
21 A. I don't, but, you know, there's an amendment.
22 It could be found. I imagine we're going to define
23 them. Maybe we may define them very similar to the
24 ability to vote by mail, which is 65 and older.
25 Q. And so wouldn't you agree that for those who

140

1 are 65 and older, Senate Bill 14 would prevent you from
2 voting even if you do not have a photo ID?
3 A. It would have prevented them from voting at the
4 poll. Sure, it would have.
5 Q. But they are still allowed to vote by mail,
6 correct?
7 A. Sure. They can vote by mail, but if they want
8 to vote at the polls, they ought to be able to. I mean,
9 anybody deserves to have it their way. It's our
10 seniors.
11 Q. But is it a denial of the right to vote to say
12 that if you choose to vote without a photo ID, you get
13 to stay at home and do it by mail?
14 MR. GARZA: Objection. Argumentative and
15 asked and answered. You can answer.
16 A. I think that -- I think voters should be
17 afforded the opportunity to vote however they want to,
18 so long as it's provided by law, and by arbitrarily,
19 cutting out one avenue and saying, well, you know, don't
20 fret, you can do it this other way, you know, I think
21 it's a preference. I think there are people who still
22 don't like voting with computer machines and want to see
23 a tabulated ballot. I think that -- And bare in mind
24 these seniors that have been voting much longer than you
25 and I have, they like things a certain way. As I reach

141

1 that status, I agree with them, you know. So I just --
 2 I think it's a -- if that was the case, if that was the
 3 -- if the fact is you could have voted by mail and not
 4 have to show an ID, then why did we deny the opportunity
 5 to vote in person without an ID? What's the harm?

6 Q. Does MALC contend that the Texas legislature
 7 intended to harm rural voters by passing Senate Bill 14?

8 A. I think during the debate when it was
 9 illustrated and laid out that the challenges that rural
 10 Texans would experience and endure of having to make
 11 themselves available to a DPS office that may not be in
 12 their respective county, I think we knew that we were
 13 going to be excluding population that would have a undue
 14 hardship to receive a -- receive a certificate of
 15 voting. And I don't think that -- that -- I don't think
 16 it would be fair to allow anyone to say, well, I didn't
 17 know that that was the -- you know, that that was just
 18 merely an unintended consequence.

19 I think that on every instance that we've
 20 discussed, there was an alternative to provide a more
 21 reasonable path, and for not granting them that path, I
 22 think the legislature -- those who voted for this Senate
 23 Bill 14 made a conscious decision to exclude or limit
 24 their ability to participate.

25 Q. Does MALC contend that the Texas legislature

142

1 intended to harm urban voters by passing Senate Bill 14?

2 A. As I think in the debate when members including
 3 members of MALC pointed out the challenges of urban
 4 environments, the limitations on the number of DPS
 5 facilities within major cities, the limitations of the
 6 operating hours to 8 to 5 and open till 6 on Tuesday,
 7 but closed on Saturdays and Sundays, and that testimony
 8 conflicting with people who don't have a driver's
 9 license are presumptively not driving, which means they
 10 are riding buses and getting rides, skipping work.

11 I think when you lay out all the
 12 challenges to live in a big city and go to DPS only to
 13 be met with a two-hour waiting line, like San Antonians
 14 did yesterday afternoon, I think when that was
 15 articulated and there was no accommodation made to
 16 facilitate or provide funding for additional voter
 17 stations or having mobile driver's license and voter
 18 identification cards to make them more accessible, I
 19 think we knew we were excluding people, and I don't
 20 think it was by omission. I think people knew the
 21 consequences of their voting rights.

22 Q. I hear through a number of these answers to
 23 these last questions, MALC contends that you can infer
 24 discriminatory purpose based on the effect that this
 25 bill would have on minority groups and the other groups

143

1 that we've discussed recently; is that true?

2 MR. GARZA: Objection. Mischaracterizes
 3 his testimony.

4 A. I guess what I'm -- what I'm trying to say is
 5 that oftentimes in the legislative arena, we pass pieces
 6 of legislation and then there's these consequences that
 7 ensue, and you hear more often than not, well, that was
 8 just an unintended consequence. In every subject matter
 9 that you presented to me, whether they be rural Texans
 10 or urban Texans or senior Texans or young Texans, this
 11 debate captured and covered these challenges that were
 12 going to be presented if Senate Bill 14 passed, and,
 13 more importantly, there were those who felt there were
 14 reasonable alternatives and accommodations that could
 15 have been made to offset or to dilute, diminish that
 16 risk of disenfranchising a voter, and every single time
 17 those were rejected on some pretty consistent yays and
 18 nays. The vote patterns were very consistent.

19 And so I can tell you a number of -- or at
 20 least a few conversations -- you know, maybe fewer
 21 conversations of people who felt one way and their party
 22 told them to do it another way, but the fact of the
 23 matter is they were made acutely aware of these
 24 challenges that could potentially exist, and so a
 25 conscious vote to either accept or deny an amendment was

144

1 going to come with these consequences that could not be
 2 then presented sometime in the future to say, well, we
 3 had no idea that we were going to impact seniors. We
 4 had no idea that the challenges in rural Texas were
 5 going to be that bad. We had no concept that you had to
 6 wait two hours in a big city just to get inside a DPS
 7 office.

8 I think people are very aware of the
 9 circumstances because they were very well -- they were
 10 articulated very -- you know, very well, and when --
 11 when people may be decisions to reject those amendments
 12 I think they knew that they were going to -- the result
 13 of that policy choice was going to impact people, and I
 14 think it's harmful.

15 Q. How many members of the legislature who are
 16 members of a minority group voted for passage of Senate
 17 Bill 14?

18 A. I don't know. I'm guessing, 7, 10. I'm -- You
 19 know, in that ballpark. In that ballpark.

20 Q. But more than five?

21 A. I'd be guessing, but I -- I think so.

22 Q. Does MALC know how many amendments that were
 23 offered by minority members of the House or the Senate
 24 were accepted?

25 A. I don't know that. I don't.

145

1 Q. Does MALC know how many of those amendments
2 ultimately ended up in the bill?
3 A. I don't know that.
4 (Exhibit 10 marked.)
5 Q. Do you recognize what has been marked
6 Exhibit 10?
7 A. Portion of the House Journal.
8 Q. On Page 3, SB14, Adoption of Conference
9 Committee Report. What is this vote?
10 A. This is the -- This is the -- the bill as it
11 comes out of conference. There's a conference committee
12 report that is pretty near the final passage and
13 placement of this bill on governor's desk, so that's
14 what that is.
15 Q. And if the conference committee report is
16 approved, then that's the version that goes up to the
17 governor, correct?
18 A. Yes.
19 Q. Was this the last vote on SB14 in the House?
20 A. I'm not sure because at some point there was a
21 resolution to go outside the bounds which I think is
22 very rare and unusual, and I don't know if that preceded
23 this conference committee report or if it -- if it came
24 afterwards, but I think that -- that even though it's a
25 separately numbered resolution, it's asking for

146

1 permission to exceed the bounds of the conference
2 committee in Senate Bill 14. I know that happened
3 because it's a -- again, it's something that rarely
4 happens in just regular legislation.
5 I can't tell from the journal, but,
6 obviously, the resolution would have been -- you know,
7 would have been really right before or right after, so
8 it would have been -- to answer your question, it would
9 have been potentially one of the last votes before going
10 to the governor's desk.
11 Q. And this would have been a vote on the bill in
12 its entirety, not on an amendment or revision?
13 A. Right. This is on the conference committee
14 report, yes.
15 Q. If you would take a few minutes to review the
16 members of the House who voted in support of the bill.
17 A. Okay.
18 Q. And please circle the names of all members that
19 MALC contends had a discriminatory purpose in voting for
20 Senate Bill 14.
21 A. That was a very interesting question. I think
22 it certainly would require me to know what motivates the
23 inner-workings of my colleagues. I think that as I said
24 in previous questioning, that there are some members
25 that have voted yay that have some very distinct and

147

1 public views that some people would say question, but in
2 terms of, you know, looking someone in the eye and
3 asking them if -- if they're racist or they're intending
4 to discriminate, I can't tell you that I did that, nor
5 would I do that.
6 But I do believe that actions sometimes
7 speak louder than words, and to the extent that there
8 are members who say that voter identification is a means
9 of immigration policy, then I think that that is a --
10 that does not have anything to do with elections. It
11 has to do about singling people out for who they are.
12 So that being your question, I can say that with respect
13 to one person that I know firsthand that I've seen, you
14 know, make that kind of association.
15 Q. What number was that?
16 A. That would be the member that I circled here,
17 the author of Senate Bill 14, Representative Harless.
18 Q. That's because of what you read on her website.
19 A. That's because of what I've read on her
20 website.
21 Q. Anyone else?
22 A. That is the only member that I have seen with
23 my own eyes make that sort of public comment and be
24 associated with Senate Bill 14.
25 Q. Do you know how many other states have photo ID

148

1 requirements in place at this time?
2 A. I don't.
3 Q. Do you know if it's more than five?
4 A. I don't.
5 Q. Do you believe Texas is the first to adopt such
6 a requirement?
7 A. I don't.
8 Q. So you know there are other states. You are
9 just not aware of how many?
10 A. That's correct.
11 Q. Is MALC aware that the United States Supreme
12 Court upheld Indiana's photo ID law in a case called
13 Crawford versus Marion County Election Board?
14 A. I'm aware.
15 Q. Have you read that case?
16 A. No.
17 Q. Would MALC agree that if the 10 or 15
18 states are allowed to pass a particular kind of law,
19 that other State's should be allowed to do so as well?
20 A. I think it would matter to know if those states
21 were a covered jurisdiction under the Voting Rights Act.
22 Q. So MALC believes that non-covered jurisdictions
23 should be allowed to have laws that covered
24 jurisdictions cannot have?
25 A. No. I think that covered jurisdictions are

149

1 required to meet their burden pursuant to the Voting
 2 Rights Act, and if 10 to 15 covered jurisdictions were
 3 to do that, that would be persuasive with MALC.
 4 Q. But you think that non-covered jurisdictions
 5 and covered jurisdictions should have different -- not
 6 just what they must do to pass muster with the
 7 Department of Justice or District Court, but they should
 8 have substantive differences as to what laws they could
 9 have on their books?
 10 MR. GARZA: Objection as to relevance.
 11 You can answer the question?
 12 A. I guess what I'm simply saying is that Texas
 13 didn't volunteer to be a covered jurisdiction. There's
 14 a reason for it. And -- And so long as they are a
 15 covered jurisdiction, and there's a Federal act that
 16 says covered jurisdictions have to meet certain
 17 obligations, then I believe that that's Texas's burden,
 18 and -- and so -- so long as that exists -- And, you
 19 know, I think whether Texas likes it or not or whether I
 20 like it or not is insignificant. What matters is that
 21 it's a covered jurisdiction, and we have a Federal
 22 Voting Rights Act.
 23 Q. Is MALC aware of anyone in any of the states
 24 that have photo ID laws in place at this time who has
 25 been unable to vote because he or she lacks a photo ID?

150

1 A. I know -- I -- I vaguely read an article
 2 somewhere about a woman who worked at some capitol in
 3 another state that, you know, cleaned the offices of
 4 lawmakers and everybody knew her and everybody liked
 5 her, and lo and behold, she wouldn't qualify to vote
 6 under the rigors of that voter identification law in
 7 that state or something to that effect. And I remember,
 8 you know, reading that somewhere in the newspaper.
 9 Can't tell you who it is, can't tell you what state it
 10 is, but I vaguely recall something like that.
 11 Q. Do you remember when you read that?
 12 A. Probably sometime in the last six months.
 13 Q. Do you remember where you read it?
 14 A. I do a lot of reading online. I also, you
 15 know, take home a lot of reading material mostly
 16 generated by staff, and so -- but -- but it would have
 17 to have been in a publication, but mostly -- most likely
 18 an online publication.
 19 Q. But MALC is not aware of any effort of any
 20 particular person who has not been able to vote in the
 21 one of those states being --
 22 A. I don't know that we do. I don't know, and I
 23 don't know if now I -- Sorry. I just wanted to be
 24 comprehensive. I don't want to undersize the point that
 25 many members of MALC participate in policy conferences

151

1 across the country. So the extent that they are serving
 2 on panels or engaging members in other jurisdictions and
 3 that has come up, that is quite possible, but I'm not
 4 aware of any.
 5 Q. And you are not aware of any news stories, TV,
 6 newspaper, magazine, otherwise in any of the states that
 7 articulate that this has become a problem because they
 8 enacted the photo ID law?
 9 A. What I know of other states who enacted or
 10 attempted to enact the photo ID law has not come
 11 without, you know, disagreement or litigation. There's
 12 always been -- As a result of a dispute, I'm not aware
 13 of any jurisdiction that's modified their voting and not
 14 been challenged, so but other than that, I don't know
 15 any state that's repealed their voter identification
 16 law.
 17 Q. Do you know of any state that has had a court
 18 order then to cease using a photo ID law?
 19 A. I'm not aware. I don't believe so. I don't
 20 know.
 21 Q. Does MALC recognize that the Supreme Court's
 22 decision in Crawford versus Marion County Election Board
 23 is binding on the district court here?
 24 A. In Texas?
 25 MR. GARZA: Objection. Argumentative.

152

1 Calls for a legal conclusion. You may answer.
 2 A. Here as in Texas or here as in this litigation?
 3 Q. Here in this litigation.
 4 A. Yeah. I think that -- I don't know what the
 5 opinion -- I don't know what it says, but I know that
 6 our view of the opinion will be interpreted and
 7 advocated by MALC's counsel.
 8 Q. Doesn't the Crawford decision that photo ID
 9 requirements are nondiscriminatory voting regulations
 10 bind the court in this case?
 11 MR. GARZA: Objection. Argumentative.
 12 Calls for legal conclusion, assumes the legislation is
 13 identical, which it's not. You may answer the question.
 14 A. I think that it's our position that our lawyers
 15 will counsel us on the applicability of the Supreme
 16 Court opinion in our Texas case.
 17 Q. Did MALC consider the Crawford decision when
 18 deciding whether to support or oppose Senate Bill 14?
 19 A. I don't believe so.
 20 Q. Did you consider it?
 21 A. I didn't.
 22 Q. Why not?
 23 A. Because what I recall is that MALC had voting
 24 rights counsel retained and providing those
 25 recommendations from before the 2011 session. So on

153

1 matters, you know, pertaining to voting rights and
2 voting rights litigation, you know, MALC would defer to
3 its counsel. And so whatever counsel relies on in
4 forming his opinions is certainly, you know, Mr. Garza's
5 and that of our legal team.

6 Q. Did MALC consider the Crawford decision at all
7 when deciding whether to intervene in this lawsuit?

8 A. MALC considered the counsel that was presented
9 to us by our lawyers and our responses, you know,
10 indicated by our intervention.

11 Q. Even if Crawford alone were not sufficient to
12 permit the Texas legislature to adopt a photo ID
13 requirement, don't the federalism concerns raised by the
14 Supreme Court in the northwest Austin case, mandate that
15 Texas be allowed to adopt the same kinds of laws that
16 other states currently have in effect?

17 MR. GARZA: Objection. Argumentative.
18 Counsel, file a motion for summary judgment.

19 A. I'm not quite sure what the Supreme Court in
20 the northwest Austin MUD said or didn't say.

21 Q. How does MALC define voter fraud?

22 A. Not quite sure. I would certainly invite -- I
23 believe this would necessarily include definitions for
24 voting and for fraud, and so the -- anybody who is
25 voting with a fraudulent purpose, I imagine would fall

154

1 within the very broad confines of voter fraud. You
2 know, specifically speaking, I think it's in the eye of
3 the beholder. I think you hear lots of members from
4 south Texas talk about the politiquera system there
5 where you have a number of individuals who hold
6 themselves out as voting consultants, if you will, and
7 go around and marshal up the vote. Then you have people
8 in urban areas that talk about the -- the -- the
9 potential for fraud and inappropriateness of voting by
10 mail campaigns, and then you go to some other places in
11 the state where, you know, people are talking about the,
12 you know, very aggressive and assertive election poll
13 workers that have their own particular styles that may
14 conflict with sort of the norms of practices of voting.

15 And so I think if you -- depending on
16 where you come from, I think you have a different, you
17 know, perspective, but I think all three of those
18 things -- I think voting -- you know, impersonating a
19 voter certainly is fraudulent, so I think all of those
20 things could be voter fraud.

21 Q. So there's a variety of types of voter fraud
22 that you've heard complaints about?

23 A. I didn't say that I heard complaints about, but
24 I just --

25 Q. Heard stories about?

155

1 A. You hear like anecdotal, yes, yes.

2 Q. And MALC agrees that voter fraud should be
3 illegal, correct? I think you mentioned earlier.

4 A. All right. I think that -- I think we ought to

5 have laws in place for people who violate our election
6 laws, yes.

7 Q. Have you ever witnessed voter fraud?

8 A. I can't say that I have. I can't say that I
9 have.

10 Q. Would you agree that in order to witness
11 in-person voter fraud you would have to be present and
12 know the person who is voting?

13 A. No.

14 Q. How else might you discover it?

15 A. Somebody could tell me. Somebody could give me
16 a photo from a cell phone, I suppose.

17 Q. But someone would have had to have been there,
18 not you personally. I mean, you could hear a story of
19 it, but the person who discovers the fraud would you
20 agree that person has to be there and witness it as it's
21 happening?

22 A. In some instances -- And I'm trying to think on
23 my feet about, you know, instances where it happens and
24 it's not noticed, you know.

25 Q. Could you indulge me?

156

1 A. And repeat your question again.

2 (Requested portion was read.)

3 A. I think not in every instance. I think you
4 could -- I think you could say you live in one precinct
5 and -- and you vote in that precinct, but, in fact, you
6 live in another precinct and, you know, that alone
7 unwitnessed is a crime. And the fact that no one
8 witnessed it doesn't mean that it's not a crime. I
9 think that that on its face is not whether or not it's
10 an enforceable act or whether there's a prosecution.

11 Q. No. I think we would agree that that's a
12 crime. My question is if there was no one there to
13 witness it, would it be discovered?

14 A. Well, I think you could document that. Of
15 course, you could. If -- If you knew that the person
16 was registered to vote at a place that wasn't his or her
17 residency, I certainly think you could discover that.
18 You don't need to be told. Now, whether you want to
19 expend the resources of the State to go out and do that,
20 that's a policy and budget question, but in terms of you
21 don't need to -- you can conceivably discover that
22 without the aid or assistance of anybody else because
23 the act has been committed, and -- and, you know, an
24 investigation can be conducted, and you could certainly,
25 you know, come up with a violation of the law.

157

1 Q. Would MALC agree that it's easier to discover
2 fraud such as mail-in ballots when someone with the same
3 handwriting mails a stack of them? Would that be easier
4 to detect after it happens than would be in-person voter
5 fraud potentially?

6 A. And I hate to say, well, give me 5 minutes to
7 give you a scenario. I think that that wouldn't be the
8 case, but I think I understand your position -- I mean,
9 your question, and I -- I don't dispute the logic, but I
10 also think that that's not an absolute -- that there are
11 instances where that may not be true.

12 Q. Does MALC agree that it would be harder to
13 commit in-person voter fraud if each voter who arrives
14 at the polls must show a photo ID?

15 A. It seems to me that it is pretty hard already,
16 and the -- you know, as I understand it, when you
17 register to vote today you are submitting confidential
18 information as to who you are. And when there's a
19 match -- you know, everything's okay, when there's
20 something that's not consistent, you are identified.
21 You are asked to present identification at the polls. I
22 mean, that's a pretty hard clad system now. I mean, you
23 know, and I think it's supported in the fact that you
24 have very little to none by way of prosecutions in this
25 area of the law.

158

1 You know, I think -- Do you want to expose
2 600 to 700,000 Texans so that you can make a system go
3 from 99.8 percent secure to 99.9 percent secure? I
4 don't think that's a good policy choice, but that's --
5 the decision has been made by those who back Senate Bill
6 14. So I think that if you work hard and try hard, you
7 can make anything harder. Not so sure if it's justified
8 under the current circumstances.

9 MR. ASTON: Can we go off the record for
10 just a couple minutes?

11 (Recess from 2:49 p.m. to 2:51 p.m.)

12 Q. (BY MR. ASTON) Does MALC agree that members of
13 the Texas legislature have a duty to represent the
14 interests of their constituents?

15 A. Of course.

16 Q. Does fulfilling that duty include proposing,
17 supporting and voting for policies favored by his or her
18 constituents?

19 A. Sure.

20 Q. Is it a rational decision for a legislator to
21 vote for bills that are widely supported throughout the
22 state and nation?

23 A. I think history has demonstrated that sometimes
24 that may not be a good idea.

25 Q. Isn't fulfilling the wishes of one's

159

1 constituents an acceptable purpose behind voting for a
2 piece of legislation?

3 A. Again, I think it has proper context, yes, but
4 I can think of a number of instances where the popular
5 thing to do wasn't necessarily the right thing to do.

6 Q. Does MALC have any basis for disputing that a
7 majority of Texans support photo ID requirements?

8 A. Do we have a basis?

9 Q. For disputing that a majority of Texans support
10 photo ID requirements.

11 A. I think that while MALC may not dispute that
12 proposition, I think before MALC can concede that that
13 is the case, MALC would want to make sure that they had
14 access to the same materials that the opinion makers use
15 in forming that opinion to see if it's consistent with
16 our standards and methodologies.

17 Q. Does MALC have any basis for disputing that a
18 majority of the constituents of every single
19 representative that voted for Senate Bill 14 support
20 photo ID requirements?

21 A. I would -- I am unaware of that proposition
22 that -- again, make sure I heard you right -- that the
23 majority of the constituents of every single House
24 district is in favor of photo identification
25 requirements.

160

1 Q. The question referred to -- I guess it would be
2 districts represented by someone who supported the bill.
3 So the question is those who voted for the bill, do you
4 have any basis -- does MALC have any basis for disputing
5 that a majority of their constituents support photo ID
6 requirements?

7 A. Yeah. I would be -- I don't have a basis,
8 but -- but I have a comparative that -- in some of those
9 instances, and so -- but, again, I think it's really the
10 devil's in the details and how that decision or that
11 statistic was arrived at. It would be very important to
12 really look at.

13 Q. We talked a while ago about procedural tactics
14 one might use and indeed legislators do use to slow
15 down, delay or stop a disfavored bill.

16 A. Or defeat.

17 Q. Or defeat. I'd like to talk now for a few
18 minutes about procedures one might use to speed up a
19 bill that he or she supports. Do the House rules
20 provide a mechanism to waive certain procedural rules to
21 expedite the process on a particular bill?

22 A. You could suspend all rules. You can even
23 suspend the Constitution.

24 Q. And is one example waiving the five-day posting
25 rule for the House?

161

1 A. Routinely, no.
 2 Q. Have you ever had one of your bills set for
 3 hearing after the five-day posting rule was suspended?
 4 A. I'm not sure. I'm not sure. I mean, it's not
 5 an infrequent -- Excuse me. Yeah, I'm sorry. It's not
 6 an infrequent request that that's happened. I mean, it
 7 could.
 8 Q. So that is routine you said.
 9 A. It's not a routine. It's just not infrequent.
 10 I mean, no one would be surprised by it if someone were
 11 to make that motion.
 12 Q. So then isn't it fair to say that the House
 13 rules can be utilized by members both to expedite a bill
 14 they support and to delay or stop a bill they oppose?
 15 A. To a degree, yes, sir.
 16 Q. Do the rules allow for -- Do the rules have
 17 mechanisms by which you could do either one of those
 18 things?
 19 A. I mean, the rules say that you can have no
 20 rules, okay, and so in that instance, it's -- it's the
 21 OK Corral on the House floor, I mean, and so -- but I do
 22 believe that the -- the rules themselves are in place
 23 have a tendency to be designed to work towards the
 24 elimination of proposals, not to encourage and foster --
 25 not to encourage and foster the way you accelerate and

162

1 pass proposals.
 2 MR. ASTON: Can you read that back?
 3 (Requested portion was read.)
 4 Q. So what do you mean by that?
 5 A. Well, I mean, if you take a 10,000-foot view of
 6 the legislature and we introduce 5,000, 6,000 pieces of
 7 legislation every session, we pass 1,000 of them, 1,500,
 8 the fact that we have 140 day time limit, we have
 9 express rules that prevent activity on the floor of the
 10 House within the first 60 days, you are -- literally,
 11 it's a race against the clock.
 12 And so to the extent that -- that you are
 13 trying to advocate and pass your proposals, your
 14 measures, you are working against hard deadlines that
 15 can defeat a bill, I have rarely seen someone say we
 16 need to suspend all the rules so that we can take a bill
 17 and pass it now. I have heard -- I've never witnessed
 18 it myself, but I am told, you know, about the days where
 19 you could stop the clock before midnight, and it was --
 20 it was midnight everywhere else in Texas, but the House
 21 floor. And I'm reminded of days where bills have been
 22 introduced -- have been drafted, filed, introduced,
 23 passed and sent to the Senate all in one day. I've
 24 heard about these, but these are really kind of the
 25 outliers, the tails.

163

1 When we start departing from procedure on
 2 bills of great import, not just local bills or something
 3 that may have a significance in somebody's particular
 4 district, when we do it on big controversial bills, I
 5 think that that's being done more so for a different
 6 reason. It's to facilitate passage of something that
 7 would be difficult to do.
 8 And so, you know, you asked me a question
 9 earlier about, well, you can -- people pass entire bills
 10 as amendments and there are one or two pages, of course
 11 they do. When you want to pass an omnibus rewrite of a
 12 code or multi-page, multi-section bill with lots of new
 13 language, the body as a matter of practice will put a
 14 stop to that because nobody's going to pass something or
 15 vote on something that they don't know, you know, what
 16 it does.
 17 And so, you know, I think that even though
 18 the body will often disagree over the direction of
 19 policy, we all sort of hold a fidelity to the
 20 institution itself and not going to create a practice
 21 that -- you know, that can be detrimental to the
 22 institution, and I think that's why you see -- you know,
 23 people talk about, you know, the institution sometimes
 24 being bigger than the two parties that represent it.
 25 Q. So does MALC believe that one use of the rules

164

1 to slow things down is legitimate and the other to speed
 2 things up is not legitimate?
 3 A. I think that rules that are used to slow down
 4 legislation is not a first option. It's really a last
 5 resort. I think rules used to accelerate -- If you have
 6 the ability to use the rules to accelerate legislation,
 7 then you probably have the ability to not have any
 8 rules, and the fact of the matter is -- I mean, the
 9 rules are really not designed -- I think the rules as
 10 written when you -- when you read through them, you
 11 recognize that they apply to, you know, really protect
 12 the minority voice as the way I see it.
 13 And -- And so, you know, I think it's fair
 14 game -- it's fair game that if you wrote the rules, you
 15 know, you ought to be in a best position to follow them.
 16 These are rules that were written and passed by the
 17 majority. And so, you know, the reason why people
 18 operate under the rules -- I mean, the five-day postings
 19 are insignificant, you know. I think, you know,
 20 rewriting an entire calendar rule in hindsight because
 21 of a result that prevented a voter ID bill from passing
 22 in 2009, I think that's questionable. That's a
 23 questionable procedural day of departure, I think.
 24 Q. Are you referring there to the House resolution
 25 that we talked about earlier?

165

1 A. Yeah, of course.
 2 Q. The one that passed 143 to zero?
 3 A. Absolutely. I'm very -- I'm intrigued to go
 4 play back the videotape to hear the author of the bill
 5 say we're going to add a new Section 6 so that we could
 6 prevent people from killing the Voter ID Bill. I think
 7 you would have had a different debate. I don't think --
 8 You know, these are rules that we all have to read, and
 9 we are all accountable to and we're responsible for our
 10 own votes, but, you know, if you -- if you -- if you
 11 wanted to take a detailed look at, you know, problems
 12 and solutions and the evolution of voter ID passages,
 13 you would see that. There have been accommodations made
 14 to facilitate passage based on whatever barrier you ran
 15 into in the prior session. There's at least a couple of
 16 examples in that regard.
 17 Q. You mentioned earlier your view that the rules
 18 are designed to protect the minority. In your -- I
 19 guess it's 10 years now in the House?
 20 A. 12.
 21 Q. 12 years now in the House, how many of those
 22 years were you in the majority and how many of those
 23 years have you been in the minority?
 24 A. I've been in the majority two years and the
 25 minority ten.

166

1 Q. Implementation of Senate Bill 14 has been
 2 delayed for about a year now. Can MALC quantify the
 3 burdens, financial and otherwise, that this process has
 4 placed on the State and the people of Texas?
 5 A. Can we quantify in terms of telling you how
 6 much it cost?
 7 Q. Or the financial burden over the last year of
 8 preclearance and the other burdens.
 9 A. Sure. You know, I -- I think it's -- I think
 10 that's a fair question. I think it's also equally fair
 11 to sort of measure the fact that it does take two to
 12 Tango. You know, one defendant or defendant-intervenor
 13 can control the -- the -- you know, the legal docket
 14 system. You know, from what I remember and what I
 15 experienced in redistricting, I think the judges on the
 16 panel have something to say about how fast or slow we
 17 go, and I've been paying attention to the exchange of
 18 information in discovery, and, you know, I can tell you
 19 in redistricting, you know, that the state went so far
 20 as to blame the litigants for slowing things down.
 21 I mean, if things were perfect, there
 22 wouldn't be any litigation. So I think that if -- if
 23 the State wanted to facilitate a more efficient means of
 24 administering changes to voting patterns and procedures,
 25 that they would probably engage in a more robust and

167

1 earnest discussion about coming up with practical
 2 policies that are appealing to people of all stripes,
 3 not just political stripes, but of people of different
 4 races and ethnicities.
 5 I have had my share of conversations with
 6 people that have waived and have not waived that have
 7 talked about the fact that, you know, having a primary
 8 in May is not as much fun as it is having one in March,
 9 and if we only worked a little harder to get a better
 10 redistricting map, perhaps we could have a March
 11 primary. I think there's people in runoffs that are
 12 having regrets right now. Of course, things could be
 13 faster. It could be easier, but, certainly, it's not
 14 because groups like MALC are holding up the train. I
 15 think it -- I think that we both acknowledge that
 16 there's a shared responsibility of being where we are
 17 today.
 18 Q. You mentioned something about passing policies
 19 that are popular --
 20 A. Yeah.
 21 Q. -- among many stripes. The polls that we
 22 looked at from Dr. Shaw's report would suggest --
 23 A. It would tell half the story.
 24 Q. That Voter ID bills are popular, correct?
 25 A. It would say half the story, correct, and I'm

168

1 curious to see responses to Dr. Shaw's questions about
 2 same day voter registration or being able to vote by
 3 internet, being able to, you know, register to vote as
 4 you get your driver's license, being able to register to
 5 vote as you pay your property taxes. I'd like to see
 6 the responses to questions about making voting easier.
 7 As I think that -- You know, just because
 8 Dr. Shaw's been so gracious to give us just a few sets
 9 of questions doesn't mean that's the only thing Texans
 10 are thinking about. Let's find out what they really
 11 think about voting, and let's find out ways to
 12 accommodate that. I can tell you the area I represent,
 13 they'd like to see a much longer voting period. They'd
 14 like to see election days on weekends, be able to go to
 15 church and go cast their ballot when they walk out,
 16 being able to walk out of a college classroom and go to
 17 the dining hall and cast a ballot. I think it would be
 18 great if we make those accommodations to make voting
 19 more accessible. I agree with you.
 20 Q. Do you agree that as a covered jurisdiction,
 21 Texas is at a tremendous disadvantage when it attempts
 22 to enact laws that change voting procedures?
 23 A. I would be the first person to tell you that I
 24 wish Texas wasn't a covered jurisdiction. Again,
 25 there's a part of our State's past that nobody's proud

<p style="text-align: center;">169</p> <p>1 of, and this is a result of trying to rectify in writing</p> <p>2 a bunch of wrongs.</p> <p>3 And so to the extent that it places a</p> <p>4 additional strain on the State of Texas to -- to</p> <p>5 demonstrate that they are working with clean hands and</p> <p>6 in good faith, I think that's a distinction Texas earned</p> <p>7 all by itself as a result of its history.</p> <p>8 Q. But would you disagree with the quote that</p> <p>9 we're still at a disadvantage as opposed to non-covered</p> <p>10 jurisdictions?</p> <p>11 A. As a minority, I don't see that.</p> <p>12 Q. You don't see that as a disadvantage is what</p> <p>13 you are saying?</p> <p>14 A. As a minority, no.</p> <p>15 Q. We discussed a minute ago, May was when Texas</p> <p>16 conducted the 2012 primaries for Republicans and</p> <p>17 Democrats?</p> <p>18 A. Right.</p> <p>19 Q. Once again, that was about a year after Senate</p> <p>20 Bill 14 passed and signed, and the photo ID requirement</p> <p>21 was not used in May, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Does MALC acknowledge that this constitutes an</p> <p>24 irreparable injury to the State of Texas?</p> <p>25 A. I think that it's a speculative injury if Texas</p>	<p style="text-align: center;">171</p> <p>1 remove noncitizens from Texas's voter rolls?</p> <p>2 A. I think Texans have a legitimate interest in</p> <p>3 making sure that their election registration rolls are</p> <p>4 as accurate as they can be.</p> <p>5 Q. Would MALC have supported Senate Bill 14 if it</p> <p>6 had allowed for non-photo IDs to be used?</p> <p>7 A. I think that there was a package of ideas that</p> <p>8 would have made Senate Bill 14 more of a compromise</p> <p>9 position that I don't think -- You know, MALC doesn't go</p> <p>10 into a room and do a straw poll and say we're going to</p> <p>11 come out and support this. You know, MALC tries to</p> <p>12 provide its members and equip them with the best</p> <p>13 information and the best practice out there. The</p> <p>14 individual members go out and represent their districts.</p> <p>15 And so I think that you could have found</p> <p>16 several accommodations and still find people who would</p> <p>17 vote against photo identification. I think there were</p> <p>18 those that were working in true belief that they could</p> <p>19 come up with a measure that would have been acceptable</p> <p>20 albeit not ideal, but acceptable, and I think that, you</p> <p>21 know, a dialogue of looking at certain forms of ID</p> <p>22 that -- you know, that don't require a photo or not</p> <p>23 require a photo and not limited to a driver's license</p> <p>24 may have been appealing.</p> <p>25 Q. This morning, if I recall, you said that MALC</p>
<p style="text-align: center;">170</p> <p>1 were to prevail.</p> <p>2 Q. And if Texas does prevail and this law's</p> <p>3 precleared, would MALC acknowledge that -- what remedy</p> <p>4 will Texas get for not being able to use it in the May</p> <p>5 primary?</p> <p>6 A. They will get the assurance that their public</p> <p>7 policy choices don't have the purpose -- discriminatory</p> <p>8 purpose or effect that some people thought.</p> <p>9 Q. But there's nothing to make them whole, is</p> <p>10 there?</p> <p>11 A. Well, it's to -- it's to let Texans know that</p> <p>12 we've come a long ways since the days of Jim Crow, I</p> <p>13 think, and that's something that we need to acknowledge</p> <p>14 if you are right.</p> <p>15 Q. And Texas would be irreparably injured a second</p> <p>16 time in late July when we hold our primary runoffs</p> <p>17 without Senate Bill 14 in place, correct?</p> <p>18 A. I'll think that's speculative again. I think</p> <p>19 the only way that can be true is if Texas were to</p> <p>20 prevail, and since the trial hasn't happened, it's hard</p> <p>21 for me to give you an opinion.</p> <p>22 Q. Are there large numbers of noncitizens on</p> <p>23 Texas's voter rolls?</p> <p>24 A. I don't know that.</p> <p>25 Q. Should Texas use its resources to attempt to</p>	<p style="text-align: center;">172</p> <p>1 opposed Senate Bill 362, is that correct, in 2009?</p> <p>2 A. I believe it did, yes.</p> <p>3 Q. And didn't that allow for some of the sorts of</p> <p>4 non-photo IDs?</p> <p>5 A. I'd have to look at it. While you are looking</p> <p>6 for it, I can tell you that one of the -- one of the</p> <p>7 bigger discussion points that Representative Anchia was</p> <p>8 leading was the ability to have the same day voter</p> <p>9 registration, and -- and I know that members of MALC</p> <p>10 were in support of that, and I don't think that that was</p> <p>11 given a -- given any real consideration.</p> <p>12 (Exhibit 11 marked.)</p> <p>13 Q. Please take a few minutes to review this</p> <p>14 exhibit. For your information, it's Section 6 and</p> <p>15 Section 10, the two that I want to discuss.</p> <p>16 A. Okay.</p> <p>17 Q. Section 6 on Page 3?</p> <p>18 A. Yes.</p> <p>19 Q. Part B, "On offering to vote, the voter must</p> <p>20 present to an election officer at the polling place</p> <p>21 either, one, one form of identification listed in</p> <p>22 Section 63.0101(a), or, two, two different forms of</p> <p>23 identification listed in Section 63.0101(b)."</p> <p>24 If you turn to Section 10 on Page 5,</p> <p>25 that's where they have amended Section 63.0101. Section</p>

173

1 (a) is a photo identification. Driver's license or
2 personal identification card, US military identification
3 card, US citizenship certificate, US passport, a license
4 to carry a concealed handgun issued to the person by the
5 Department of Public Safety.

6 Would MALC agree that those are photo IDs
7 that list -- it's quite similar to the one in Senate
8 Bill 14?

9 A. Correct.

10 Q. And one of those from that list would entitle
11 one to vote had this bill passed.

12 A. I see that.

13 Q. Reading starting on Line 22, Part (b) of the
14 bill.

15 A. You are still on Page?

16 Q. Still on Page 6, Line 22. "The following
17 identification is acceptable as proof of identification
18 under this chapter." And then we have things like the
19 voter's voter registration certificate or a copy of a
20 currently utility bill, bank statement, government
21 check, paycheck, other government document shows the
22 name and address of the voter, official mail address of
23 the person by name from a governmental entity, certified
24 copy of a birth certificate, original or certified copy
25 of a person's marriage license or divorce decree.

174

1 Further on down, a library card, a pilot's license.

2 Would MALC agree that this is a pretty
3 substantial list of non-photo identifications?

4 A. Much different than Senate Bill 14, yes.

5 Q. And any two of those would have entitled one to
6 vote had this bill passed?

7 A. Correct.

8 Q. And yet MALC still opposed Senate Bill 362.

9 A. I think that --

10 Q. Do you recall why that was?

11 A. Well, I mean, I think it's -- let's put this in
12 proper context. The fact of the matter is Senate Bill
13 362 never came up for a vote on the floor of the House,
14 and I think you and I have had the very engaging
15 conversation about, you know, policy choices as
16 reflected by statements of voters in journals. I mean,
17 we don't have one for Senate Bill 362. I think that
18 until a bill is passed to engrossment and passed on
19 final passage, if they're reading -- everything's being
20 negotiated.

21 And I can tell you that in 2009, some of
22 the areas that were very important to our subject matter
23 experts on voter identification had to deal with same
24 day voter registration, stiffened penalties for those
25 are accused of voter impersonation, making them felonies

175

1 and finding ways to make voting more accessible, and so
2 you know, there is the -- there are some of those people
3 who harbor the view that you can't -- that you have to
4 be opposed to legislation because once you lose it in
5 conference, once it's rewritten in conference, once it's
6 finally negotiated -- You know, very much like the
7 budget. We take a budget vote and then we take a
8 conference committee report on the budget that's much
9 different than the budget we voted on.

10 There are people who think, well, I don't
11 trust the leadership to hold true to these provisions,
12 so I'm going to negotiate myself -- on the conference
13 committee, I'm going to negotiate myself a commitment
14 from the chairman to do different things. So suffice it
15 to say Senate Bill 362 never made it to a second reading
16 debate, you know, never made it to the floor. I want to
17 make sure I'm right here.

18 So if it never was eligible for
19 consideration because of the local calendar being in
20 front of, you know -- and some of these decisions were
21 never final, while I may have personally opposed it,
22 MALC may have opposed the notion of disenfranchising
23 voters, I would be -- I'd be -- I'd be devastated if
24 there weren't conversations and communications taking
25 place to try to find a reasonable middle ground or

176

1 alternative to find sensible legislation that would have
2 been palatable to many people. So that's my
3 recollection, but forgive me. Lots of bills, lots of
4 sessions. They all sort of run together sometimes.

5 Q. Are there any circumstances -- Because I guess
6 Senate Bill 362 wouldn't even really truly have been a
7 photo ID requirement with the long list of non-photo
8 IDs.

9 A. Sure.

10 Q. Are there any section you could imagine in
11 which a photo ID was required that the MALC could
12 support that bill?

13 A. You know, I know that the MALC would have been
14 in support of MALC member amendments to do certain
15 things. We've talked about exclusions for senior
16 citizens. We've talked about opening the list of photo
17 identifications. You know, I think the fact of the
18 matter is if we look at the evolution in voter
19 identification legislation, when you compare the 2011
20 version or the 2009 version, you know, you don't need to
21 take a lot of time to -- to decide that the 2009 version
22 seems to be a little more accommodating, and for some
23 reason, you know, that bill did not pass.

24 And so, logically, you would think that
25 folks who want to work into a direction to make the bill

177

1 even more accommodating, if they had that desire to keep
2 it the same, if they didn't want to negotiate any
3 further, but what happened is the bill actually became
4 more restrictive in 2011 and, you know, nothing occurred
5 between the interim of 2009 and the session of 2011 that
6 demonstrated that we need to tighten our grip on voter
7 identification.

8 So, I mean -- So I think that, you know,
9 it's not fair to characterize that no matter the
10 circumstances MALC would never embrace a photo
11 identification requirement. I think that's not true. I
12 think people file amendments because they want to make
13 legislation better and then they will look at the end
14 game. They will look to see what the final bill looks
15 like, what are the commitments and assurances that this
16 bill is not going to be yanked from under our feet while
17 it's in conference and commitments from the authors to
18 say if this bill comes back without this proviso, you
19 will -- you will jump on the grenade and you will not
20 let this bill pass. Those things happen all the time in
21 the legislative baseball.

22 This is one of the few bodies that still
23 believes in looking someone in the eye, shaking a hand
24 and having a deal, and while we fight like cats and
25 dogs, like Republicans and Democrats, Republicans and

178

1 Democrats can look each other in the eye, shake their
2 hand and make a deal, and so I don't want to minimize,
3 you know, that environment. That certainly exists.
4 But, you know, people will negotiate a bill. It finally
5 leaves the chamber of the House and Senate Bill 362 just
6 did not have that opportunity.

7 Q. I didn't want to interrupt you, but you
8 mentioned that nothing happened between the '09 and the
9 2011 sessions. There was an election in 2010, correct?

10 A. Certainly.

11 Q. Do you know what that turnover partisan-wise,
12 Republican and Democrat, was between the '09 session and
13 the Texas House and the 2011 session in the House?

14 A. I think Republicans won, if that's what you are
15 asking.

16 Q. Do you know how many seats they gained?

17 A. 20 something.

18 Q. But is protecting the integrity of the ballot
19 box partisan or is it civic?

20 A. Again, I think that there was a Republican
21 majority. You don't need a hundred. You just need 176,
22 and so, you know -- and with the change in political
23 landscape, you could have passed the same bill,
24 suspended every rule in the book, and, you know, that
25 didn't occur, I mean.

179

1 So I'm not persuaded that because there
2 was a landslide election, that voter ID, you know,
3 became tougher. Voter ID was proposed because there was
4 a problem that needed a cure, and -- and if the voter
5 identification problem worsened in the election of 2010,
6 then maybe there were some Republicans that might be
7 wanting to recount their elections, I mean, because if
8 there's fraud, you know, it happened in the Republican
9 landslide, I don't -- I don't -- I don't buy the notion
10 that because it became more partisan and more Republican
11 that these bills have to get tougher and not be as
12 accommodating or work towards that end.

13 Q. But aren't there some things in the House that
14 require two-thirds vote?

15 A. It's just suspending the Constitution.

16 Q. What about suspending the rules?

17 A. Majority vote.

18 Q. With that large turnover, you said might be
19 about 20 seats?

20 A. I think it went from 76 to 101, I think, or
21 something like that.

22 Q. But isn't the -- There are certain things in
23 which the threshold between 99 and 101 members matters,
24 correct?

25 A. In suspending rules, I mean, or having bills

180

1 take immediate effect requires a two-thirds vote. If
2 you want to suspend the rules, you need a majority vote.
3 You want to suspend the Constitution, you need a
4 four-fifths vote. So when you want to tinker with the
5 Constitution, 30 people control the legislature, but
6 everything else requires a majority vote or two-thirds.

7 Q. In the House two-thirds would be at 101,
8 correct?

9 A. It's two-thirds of present and voting, and so
10 assume you have perfect attendance, yes, that's the
11 number.

12 Q. Is the number 100 or is it 101?

13 A. I thought it was 101. It all runs together. I
14 apologize.

15 Q. Sir, I definitely want to thank you for your
16 time. We've had a long day. I appreciate your patience
17 and your cooperation, and we are almost finished.

18 A. Well, thank you -- if we're thanking each
19 other, thank you. I mean, the material is dense. It's
20 hard to absorb sometimes. So I gave you the impression
21 that I wasn't being responsive or, you know, giving long
22 answers. It's only because this is just a lot of
23 information, so thank you for your accommodation.

24 Q. Certainly. You've talked throughout the day,
25 and I want to make sure I get the way you characterize

181

1 it -- characterize it accurately. You were talking
2 about the purpose of the bill. I believe you said that
3 the rationale remains in your words elusive. You said
4 that you don't believe there is a lot of in-person voter
5 fraud going on.

6 Are those fair characterizations, A, of
7 what you've said, but, B, of your position?

8 A. I think the transcript will reflect what I've
9 said, so if I differ with what's in the transcript, I
10 rely on the transcript. That said, I think in its
11 proper context that the notion of a high level of voter
12 impersonation activity taking place is only reflected in
13 the fact that there are virtually no prosecutions for
14 that other than one that's been referred to the Attorney
15 General's Office.

16 Q. Does the low number of prosecutions necessarily
17 mean that there's a low amount of voter fraud or could
18 it also just mean that there's a low amount of voter
19 fraud that's been detected to date?

20 A. I think that when you compare that data point,
21 one actual indicted case of voter fraud, and you say I
22 have time to work on that or I have time to fix a budget
23 that needs \$27 billion, I think I know what's more
24 important to the voters I represent.

25 And -- And if it's -- You know, those

182

1 kinds of choices, I think, it's easy. If it's -- You
2 know, I'm -- I'm bound and determined to pass something
3 that I haven't been able to pass since 2005 and, you
4 know, then I think that's -- I think budget and other
5 important issues aren't really as significant as passing
6 something that you've thought you should have been able
7 to do six years ago.

8 Q. How much fraud should Texas be required to
9 discover before the legislature is permitted to enact a
10 photo ID requirement that is designed to prevent fraud?

11 MR. GARZA: Objection. Argumentative,
12 assumes conclusions that the witness has not testified
13 to.

14 A. I think that -- I think that when we have
15 140 days to conduct the people's business and our only
16 constitution requirement is to pass the budget, doing
17 things, setting emergency calendar items, that -- that
18 we did in 2011, nothing was more emergent than closing a
19 \$27 billion budget shortfall, and so for everyday that
20 we spent working on these types of issues, you know,
21 sometimes when you have a hunch that something's going
22 on and you want to make sure you perfect the
23 legislation, we pass a lot of studies.

24 We empower our Department of Public Safety
25 to conduct investigations. We have Texas Rangers. We

183

1 have prosecutors, assistants at the Attorney General's
2 Office that's bill funded. We have lots of good lawyers
3 out there. If we needed to really work on our voter
4 fraud to make this a real priority, we could have done
5 the work. Instead, we passed the bill because someone
6 says, well, you don't know how bad it is if you are not
7 there.

8 I can say that about a lot of things. I
9 could say that about the people sitting in traffic right
10 behind you. I can say that about the people who showed
11 up to the health clinic today and found out that they
12 are no longer eligible to receive services.

13 At some point we have to prioritize. I
14 think the data points on some of these other more
15 important issues are very real and undisputed. We're
16 enacting voter identification, photo identification
17 because we have the ability to do so, but it doesn't
18 necessarily mean that it rises to the level of import at
19 the exclusion of our priorities, and so I think that we
20 could have done this another way.

21 And I think the State of Texas is well
22 equipped to, you know, find a legitimate means to come
23 up with a very laser like solution to a very specific
24 problem, and, instead, you know, we took a mallet
25 instead of a scalpel and 600 to 700,000 minorities have

184

1 voter registration that doesn't have a driver's license.
2 That's a big concern for me.

3 Q. But does MALC believe that Texas must tolerate
4 some voter fraud before it could enact a photo ID law?

5 A. I think that when Texas decides to address the
6 real or perceived allegations of voter fraud, we need to
7 get it right is what I think. If it means we have to
8 tolerate fraud or if it means we have to put it off a
9 session, if it means we have to study it, if it means we
10 have to put some money into discovering what the real
11 problem is, then we should do it because I think that if
12 someone telling me, well, how many -- you know, how many
13 guilty people on death row are we are going to have to
14 spare their lives so that we can save one who's
15 wrongfully accused? I don't know if we can make that
16 judgment. And so I want to be careful when we're
17 trampling on people's constitutional rights, and I want
18 to get it right. I don't want to pass a bill on a
19 hunch.

20 Q. So if Texas has to tolerate some fraud before
21 it can enact a photo ID, is that suggesting or isn't
22 that suggesting that Texas can't attempt to prevent
23 voter fraud, rather, it may only attempt to cure it
24 after it becomes a big enough problem?

25 MR. GARZA: Objection. Argumentative,

185

1 mischaracterizes the witness's testimony. You can
 2 answer.
 3 THE WITNESS: Could you repeat the
 4 question, please?
 5 (Requested portion was read.)
 6 A. And I think that the only objective evidence to
 7 even suggest that there is a voter fraud problem is one
 8 indictment out of 13 million votes cast in the 2008 and
 9 2010 elections. I think if somebody came to me and said
 10 we needed to pass this because the sky is falling at the
 11 ballot box, I think I'd want to know a little bit more,
 12 and I wouldn't want to give a knee jerk reaction because
 13 one person's been indicted without checking firsthand
 14 about the elections officials in every county in the
 15 state, without dispatching the resources of the Attorney
 16 General's Office to go out into the field and
 17 investigate, without dispatching the resources that are
 18 strategically placed by the Department of Public Safety
 19 to have them monitor these polls, to have our committees
 20 and agencies write reports and do legislative findings,
 21 conduct hearings and let's take evidence.
 22 We do those things all the time to solve
 23 Texas's problems. Voter ID is no different. Why we
 24 have to exercise shortcuts and why we have to do things
 25 by augmenting rules and processes knowing that we're

186

1 exposing three-quarters of a million Texans? There's a
 2 better way and that's simply what MALC is suggesting and
 3 that's why MALC is in the lawsuit.
 4 MR. ASTON: That's all I have.
 5 MR. GARZA: I just have a couple -- just a
 6 few questions, Mr. Chairman.
 7 EXAMINATION
 8 BY MR. GARZA
 9 Q. We've talked in a speculative way about lots of
 10 topics. Would you agree that voting in one party's
 11 primary and voting in the other party's runoff is voter
 12 fraud?
 13 A. Sure.
 14 Q. That's illegal in Texas?
 15 A. It is.
 16 Q. Do you know whether that's ever happened?
 17 A. I'm sure it has. I don't -- I don't --
 18 Q. Would that be something that you could detect
 19 without requiring photo ID?
 20 A. Of course.
 21 Q. You could simply look at the records?
 22 A. Absolutely.
 23 Q. Do you know if the Attorney General's Office
 24 ever has done -- has ever done an analysis of a
 25 crosscheck of people who voted in one primary and

187

1 another party's runoff?
 2 A. I don't know that.
 3 Q. Have you ever heard of -- of a race in Houston,
 4 Texas for Congress between Gene Green and Ben Reyes?
 5 Are you familiar with that?
 6 A. I know both of the individuals. I know at one
 7 point in time they ran against each other.
 8 Q. And you are not aware of whether that
 9 circumstance actually occurred in Harris County?
 10 A. That -- That's a little bit before my time. I
 11 know there's -- my Houston colleagues talk about the
 12 intensity of Harris County elections.
 13 Q. You are not aware that over 100 people voted in
 14 the Republican primary and then the Democratic runoff?
 15 A. Something to that degree. With precision, I
 16 don't know.
 17 Q. And you are not aware that none of those people
 18 were prosecuted.
 19 A. Right. I'm not aware of that.
 20 Q. Okay. You were asked if it wouldn't be harder
 21 to commit voter fraud if you have a photo ID
 22 requirement. If you have a fake photo ID, would having
 23 a photo ID requirement prevent that person from voting?
 24 A. Not if it was -- Not if it was a good ID.
 25 Q. Well, do Texas election officials have any

188

1 material in order to examine a fake registration,
 2 driver's license, the scanner that they use, for
 3 instance, at the airport, the black light that they use
 4 at the airport? Are resources allocated to election
 5 officials to purchase those kinds of equipment?
 6 A. There's nothing in 14 that deals with that, and
 7 I know that, you know, fiscal note having to be as near
 8 zero as possible, I mean that would certainly have cost
 9 somebody some money. That would have been a cost of the
 10 bill.
 11 Q. If voter fraud is being committed by a corrupt
 12 election official, does it matter if the State of Texas
 13 has a photo ID requirement for voters?
 14 A. No.
 15 Q. It's the election official that determines who
 16 can vote and who can't vote in Texas.
 17 A. That's correct. Ultimately, yes.
 18 Q. And just one final question, Mr. Chairman. You
 19 were asked about in the context of how the rules were
 20 changed to facilitate photo ID to become law, and there
 21 was -- it wasn't asked of you directly, but there was an
 22 insinuation that two-thirds rule -- elimination of the
 23 two-thirds rule was of no consequence because
 24 legislation could be passed in the Senate even under
 25 two-thirds rule. Amended in the House -- And the

24 _____
25 Notary Public in and for the State
of _____

<p style="text-align: center;">1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS,) Plaintiff,) VS.) CASE NO. 1:12-CV-00128 (RMC-DST-RLW) ERIC H. HOLDER, JR., in his) Three-Judge Court official capacity as Attorney) General of the United States,) Defendant.) ERIC KENNIE, et al.,) Defendant-Intervenors,) TEXAS STATE CONFERENCE OF) NAACP BRANCHES, et al.,) Defendant-Intervenors,) TEXAS LEAGUE OF YOUNG VOTERS) EDUCATION FUND, et al.,) Defendant-Intervenors,) TEXAS LEGISLATIVE BLACK) CAUCUS, et al.,) Defendant-Intervenors,) VICTORIA RODRIGUEZ, et al.,) Defendant-Intervenors.)</p> <p style="text-align: center;">----- ORAL DEPOSITION OF MEREDYTH FOWLER JUNE 8, 2012 -----</p> <p style="text-align: center;">ORAL DEPOSITION of MEREDYTH FOWLER, produced as a</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 2 3 FOR THE PLAINTIFF: 4 PATRICK K. SWEETEN Assistant Attorney General 5 ATTORNEY GENERAL OF TEXAS P.O. Box 12548 6 Austin, Texas 78711 Tel: (512) 936-1307 7 Email: Patrick.sweeten@oag.state.tx.us 8</p> <p>9 FOR THE DEFENDANT:</p> <p>10 RISA BERKOWER DAN FREEMAN Trial Attorneys 11 U.S. DEPARTMENT OF JUSTICE 950 Pennsylvania Avenue, NW 12 Washington, DC 20005 Tel: (202) 305-0115 13 Email: Risa.berkower@usdoj.gov 14</p> <p>15 FOR THE DEFENDANT-INTERVENOR: TEXAS STATE CONFERENCE OF NAACP BRANCHES and THE MEXICAN AMERICAN LEGISLATIVE CAUCUS</p> <p>16 LINDSEY B. STELCEN 17 AMY L. RUDD DECHERT LLP 18 300 West 6th Street, Suite 2010 Austin, Texas 78701 19 Tel: (512) 394-3000 Email: Lindsey.stelcen@dechert.com 20</p> <p>21 FOR SPEAKER STRAUS: 22 MR. THOMAS R. PHILLIPS BAKER BOTTS 23 98 San Jacinto Boulevard, Suite 1500 Austin, Texas 78701 24 Tel: (512) 322-2565 Email: Tom.phillips@bakerbotts.com 25</p>																																																								
<p style="text-align: center;">2</p> <p>1 witness at the instance of the Defendant, and duly 2 sworn, was taken in the above-styled and numbered cause 3 on the 8th day of June, 2012, from 9:31 a.m. to 4:35 4 p.m., before Jean Thomas Fraunhofer, CSR in and for the 5 State of Texas, reported by machine shorthand, at the 6 Law Offices of DECHERT LLP, 300 West 6th Street, Suite 7 210, Austin, Texas 78701, pursuant to the Federal Rules 8 of Civil Procedure and the provisions stated on the 9 record or attached hereto.</p> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <td style="text-align: left;">WITNESS</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>MEREDYTH FOWLER</td> <td></td> </tr> <tr> <td>Examination by Ms. Berkower</td> <td style="text-align: right;">6</td> </tr> <tr> <td>Examination by Ms. Stelcen</td> <td style="text-align: right;">199</td> </tr> <tr> <td>Examination by Mr. Sweeten</td> <td style="text-align: right;">205</td> </tr> <tr> <td>Signature and Changes</td> <td style="text-align: right;">206</td> </tr> <tr> <td>Reporter's Certificate</td> <td style="text-align: right;">207</td> </tr> <tr> <td colspan="2" style="text-align: center;">E X H I B I T S</td> </tr> <tr> <td>NO.</td> <td style="text-align: right;">DESCRIPTION PAGE</td> </tr> <tr> <td>9</td> <td>Exhibit US-5 SB14 (previously marked) 165</td> </tr> <tr> <td>10</td> <td>Exhibit US-6 OCGA §21-2-417 (previously marked) 130</td> </tr> <tr> <td>11</td> <td>Exhibit US-29 SB362 (previously marked) 75</td> </tr> <tr> <td>12</td> <td>Exhibit US-60 PL109-2005 (Indiana) 134</td> </tr> <tr> <td>13</td> <td>(previously marked)</td> </tr> <tr> <td>14</td> <td>Exhibit US-431 Texas Legislature Online 48</td> </tr> <tr> <td>15</td> <td>Bills Out of Committee (previously marked)</td> </tr> <tr> <td>16</td> <td>Exhibit US-640 Notice of Deposition 14</td> </tr> <tr> <td>17</td> <td>Exhibit US-641 2/9/11 Press Release 44</td> </tr> <tr> <td>18</td> <td>Exhibit US-642 4/28/09 Clear Lake GOP Press Release 96</td> </tr> <tr> <td>19</td> <td>Exhibit US-643 January 2011 Interim Report 109</td> </tr> <tr> <td>20</td> <td>Exhibit US-644 SB14 117</td> </tr> <tr> <td>21</td> <td>Exhibit US-645 3/1/11 Witness List 145</td> </tr> <tr> <td>22</td> <td>Exhibit US-646 3/1/11 Select Committee Hearing transcript (Vol. 2 of 2) 159</td> </tr> <tr> <td>23</td> <td>Exhibit US-647 9/22/11 Email to John Sepehri from Meredyth Fowler 182</td> </tr> <tr> <td>24</td> <td>Exhibit US-648 6/14/11 Email to Andrew Blifford, et al from Ashley Kaden 185</td> </tr> <tr> <td>25</td> <td>Exhibit US-649 9/12/11 Email chain between Ashley Kaden and Andrew Blifford 187</td> </tr> <tr> <td></td> <td>Exhibit US-650 March 2011 Email chain Transcript (TX00211181-281) (previously marked) 191</td> </tr> <tr> <td></td> <td>Exhibit RODRIGUEZ-36 3/23/11 House Floor Debate 170</td> </tr> </table>	WITNESS	PAGE	MEREDYTH FOWLER		Examination by Ms. Berkower	6	Examination by Ms. Stelcen	199	Examination by Mr. Sweeten	205	Signature and Changes	206	Reporter's Certificate	207	E X H I B I T S		NO.	DESCRIPTION PAGE	9	Exhibit US-5 SB14 (previously marked) 165	10	Exhibit US-6 OCGA §21-2-417 (previously marked) 130	11	Exhibit US-29 SB362 (previously marked) 75	12	Exhibit US-60 PL109-2005 (Indiana) 134	13	(previously marked)	14	Exhibit US-431 Texas Legislature Online 48	15	Bills Out of Committee (previously marked)	16	Exhibit US-640 Notice of Deposition 14	17	Exhibit US-641 2/9/11 Press Release 44	18	Exhibit US-642 4/28/09 Clear Lake GOP Press Release 96	19	Exhibit US-643 January 2011 Interim Report 109	20	Exhibit US-644 SB14 117	21	Exhibit US-645 3/1/11 Witness List 145	22	Exhibit US-646 3/1/11 Select Committee Hearing transcript (Vol. 2 of 2) 159	23	Exhibit US-647 9/22/11 Email to John Sepehri from Meredyth Fowler 182	24	Exhibit US-648 6/14/11 Email to Andrew Blifford, et al from Ashley Kaden 185	25	Exhibit US-649 9/12/11 Email chain between Ashley Kaden and Andrew Blifford 187		Exhibit US-650 March 2011 Email chain Transcript (TX00211181-281) (previously marked) 191		Exhibit RODRIGUEZ-36 3/23/11 House Floor Debate 170
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29

1 Q. Do you ever draft legislation?
 2 A. No.
 3 Q. Do you help other people draft legislation?
 4 A. No.
 5 Q. Just as a procedural matter, can the speaker --
 6 like among the House rules, can the speaker introduce
 7 amendments to a bill?
 8 MR. SWEETEN: You are just asking as a
 9 general matter --
 10 MS. BERKOWER: As a general matter --
 11 MR. SWEETEN: -- of parliamentary
 12 procedure.
 13 MS. BERKOWER: Exactly.
 14 MR. SWEETEN: She can answer the question.
 15 A. No.
 16 Q. Can he introduce legislation?
 17 A. As a general matter, my understanding is no.
 18 Q. Is there any circumstance in which he could --
 19 like, I guess -- and just to be clear, I'm trying to
 20 understand if there is a distinction when he's serving
 21 as a representative of his district versus as the
 22 speaker. Can he introduce legislation at all if he's
 23 not sitting as the speaker presiding?
 24 A. My understanding of the House rules is no, he
 25 does not introduce or carry legislation.

30

1 Q. Because he's also the speaker?
 2 A. That's my understanding.
 3 Q. And does the same -- the same understanding
 4 applies to amendments?
 5 A. Yes.
 6 Q. Have you ever drafted amendments to a bill?
 7 A. Yes.
 8 Q. So do you work with other legislators to do
 9 that?
 10 A. Yes.
 11 Q. Does the speaker just as a matter of procedure,
 12 is he allowed to vote on amendments?
 13 A. My understanding is no.
 14 Q. What House district does Speaker Straus
 15 represent?
 16 A. 121.
 17 Q. Do you know what the demographics of that
 18 district are?
 19 A. I do not.
 20 Q. Where is the district located generally?
 21 A. Generally it's in San Antonio.
 22 Q. And I think you sort of got into this a little
 23 bit before, but how many staff does the speaker have,
 24 just a rough estimate of the number?
 25 A. I think a rough estimate would be around 15.

31

1 Q. And, generally, are people grouped into
 2 different areas of responsibility?
 3 A. Yes.
 4 Q. What -- What are those areas?
 5 A. We have communication staff and policy staff.
 6 Q. Can you name the members of the policy staff?
 7 A. Yes.
 8 Q. Who are they?
 9 A. Jesse Ancira, Andrew Blifford, Ashley Kaden,
 10 Jennifer Deegan, Zeke Reyna, John Schnautz, Kevin
 11 Robnett, Andrea Sheridan, Allison Winney.
 12 Q. And how are people assigned to different
 13 issues? You said you were assigned to certain
 14 committees. What is the division of work in the office?
 15 MR. SWEETEN: If you are asking about
 16 how -- the process by which bills are analyzed or
 17 legislation is analyzed, she's not going to answer that
 18 question. If they are subject matter areas and it's a
 19 general office description, you can answer it that way.
 20 MS. BERKOWER: That's what I was asking,
 21 the latter.
 22 A. Can you repeat the question?
 23 MS. BERKOWER: Sure. I guess I'm just
 24 curious how work is divided in your office. Is that an
 25 acceptable question, Patrick?

32

1 MR. SWEETEN: I mean, again, general
 2 subject matter or general division of the facts of how
 3 the office is organized, but as long as it doesn't
 4 reveal legislatively privileged information which would
 5 be about how legislation is analyzed, et cetera.
 6 A. Generally speaking, it's divided, I guess, by
 7 issue.
 8 Q. Who works on -- Who worked on voter ID in the
 9 office?
 10 MR. SWEETEN: You can answer the question
 11 as phrased as to who worked on the issue.
 12 Q. Anybody else?
 13 A. Lisa Kaufman.
 14 Q. Anybody else?
 15 A. Denise Davis.
 16 Q. Did Jesse Ancira work on the voter ID at all?
 17 A. Not that I can recall.
 18 Q. And to be clear, who is Jesse Ancira and what
 19 is his title?
 20 A. He is now chief of staff.
 21 Q. What was he in 2011?
 22 A. General counsel.
 23 Q. Do you report to him ever?
 24 A. Can you clarify report?
 25 Q. Is he your supervisor?

<p style="text-align: center;">33</p> <p>1 A. In a sense, yes.</p> <p>2 Q. And going back just a step or two, the location</p> <p>3 of District 121, is the district located primarily</p> <p>4 within the city or outside the City of San Antonio?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you ever work on issues that are specific to</p> <p>7 District 121?</p> <p>8 A. I don't recall ever working on that specific</p> <p>9 issue related to the district.</p> <p>10 Q. Are there people in your office who do that?</p> <p>11 A. I don't know.</p> <p>12 Q. And when you said that you have assisted others</p> <p>13 with -- with legislative drafting, have you ever</p> <p>14 provided substantive requests to legislative council?</p> <p>15 MR. SWEETEN: Do you mean to Texas</p> <p>16 legislative council?</p> <p>17 MS. BERKOWER: Yes.</p> <p>18 MR. SWEETEN: Has she ever requested</p> <p>19 something from TLC? You can answer the question as</p> <p>20 phrased. I had to think about that a second.</p> <p>21 A. Not in my role in the speaker's office.</p> <p>22 Q. When you worked for other legislators?</p> <p>23 A. Yes.</p> <p>24 Q. Did the speaker recently campaign for office?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">35</p> <p>1 representative becomes the speaker of the House?</p> <p>2 MR. SWEETEN: As a general matter, you can</p> <p>3 answer the question about legislative procedure.</p> <p>4 A. He is voted into the position by the other</p> <p>5 members of the House of Representatives.</p> <p>6 Q. And how does that vote just as a general</p> <p>7 process matter under the House rules? When and how does</p> <p>8 that vote take place?</p> <p>9 A. If I recall correctly, I believe it's on the</p> <p>10 first day of the legislative session, and if I recall</p> <p>11 correctly, it's a secret ballot.</p> <p>12 Q. Are there any public speeches made in</p> <p>13 connection with the election that the different</p> <p>14 potential speakers make?</p> <p>15 MR. SWEETEN: Objection. Compound. But</p> <p>16 you can answer.</p> <p>17 A. I don't recall. I'm trying to think. I don't</p> <p>18 recall.</p> <p>19 Q. Do you remember who Speaker Straus's opponents</p> <p>20 in 2011 for Speaker of the House?</p> <p>21 MR. SWEETEN: You can answer.</p> <p>22 A. I remember Ken Paxton.</p> <p>23 Q. Do you remember any public statements that</p> <p>24 either Mr. Paxton or Speaker Straus made about the vote</p> <p>25 for speaker?</p>
<p style="text-align: center;">34</p> <p>1 Q. Was that for House District 121?</p> <p>2 A. Yes.</p> <p>3 Q. When was that election?</p> <p>4 A. Last month.</p> <p>5 Q. Would that be the May 29th election?</p> <p>6 A. Yes.</p> <p>7 Q. What was the -- What was the outcome of that</p> <p>8 election?</p> <p>9 A. He won reelection.</p> <p>10 Q. Was he -- Did he have an opponent in the</p> <p>11 primary?</p> <p>12 A. He did.</p> <p>13 Q. It was a primary, right?</p> <p>14 A. Yes.</p> <p>15 Q. Was photo ID an issue in his campaign?</p> <p>16 MR. SWEETEN: You can talk about matters</p> <p>17 of public record, campaign speeches, public statements,</p> <p>18 but don't reveal communications you've had with Speaker</p> <p>19 Straus, anything that's not public record.</p> <p>20 A. I don't know.</p> <p>21 Q. So just to be clear, do you know if the speaker</p> <p>22 ever publicly discussed voter ID as part of his</p> <p>23 campaign?</p> <p>24 A. I don't know.</p> <p>25 Q. Can you explain the process by which a</p>	<p style="text-align: center;">36</p> <p>1 A. I don't.</p> <p>2 Q. So do you remember any public statements that</p> <p>3 Speaker Straus made in connection with his running for</p> <p>4 Speaker of the House?</p> <p>5 A. I don't.</p> <p>6 Q. Did you have any involvement with the process</p> <p>7 by which he became Speaker of the House? It's a yes or</p> <p>8 no question.</p> <p>9 MR. SWEETEN: You can answer that --</p> <p>10 A. No.</p> <p>11 MR. SWEETEN: -- as phrased.</p> <p>12 Q. When is the last time that you voted?</p> <p>13 A. Last month.</p> <p>14 Q. Was it in the May 29th election?</p> <p>15 A. It was early voting.</p> <p>16 Q. For the May 29th election?</p> <p>17 A. Yes.</p> <p>18 Q. Did you vote in person?</p> <p>19 A. Yes.</p> <p>20 Q. Do you usually vote in person?</p> <p>21 A. Yes.</p> <p>22 Q. How far is the -- is your polling place from</p> <p>23 your house?</p> <p>24 A. Six miles.</p> <p>25 Q. Was that -- Is it the same distance for an</p>

<p style="text-align: center;">41</p> <p>1 Q. When was that convened?</p> <p>2 MR. SWEETEN: You can answer.</p> <p>3 A. In the 2011 session.</p> <p>4 Q. And how are special committees or select</p> <p>5 committees formed as a general matter?</p> <p>6 MR. SWEETEN: I think you are asking for</p> <p>7 process.</p> <p>8 MS. BERKOWER: Yes.</p> <p>9 MR. SWEETEN: That would be subject to the</p> <p>10 legislative privilege. In other words, she can answer</p> <p>11 as a general matter who select -- who appoints a select</p> <p>12 committee, but then if you are asking why --</p> <p>13 MS. BERKOWER: I'm not asking --</p> <p>14 MR. SWEETEN: I don't think she can reveal</p> <p>15 legislative privilege.</p> <p>16 MS. BERKOWER: I'm not asking why. I'm</p> <p>17 asking the general process as a general matter pursuant</p> <p>18 to House rules how are select committees run. In if you</p> <p>19 want, I can specify based on what's in the public record</p> <p>20 and publicly available rules how are committees formed.</p> <p>21 MR. SWEETEN: You can answer that</p> <p>22 question.</p> <p>23 A. I don't know.</p> <p>24 Q. Do you know if the speaker is tasked under any</p> <p>25 rules with that responsibility?</p>	<p style="text-align: center;">43</p> <p>1 A. I believe so.</p> <p>2 Q. Do select committees ever convene for more than</p> <p>3 one session?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know of any that have?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you know of any other select committees that</p> <p>8 considered only one bill?</p> <p>9 A. I don't --</p> <p>10 Q. Are you aware of any communications between</p> <p>11 your office and other legislators concerning the</p> <p>12 creation of the select committee?</p> <p>13 MR. SWEETEN: You can answer if you are</p> <p>14 aware of any communications.</p> <p>15 A. I am not.</p> <p>16 Q. Are you aware of any communications between</p> <p>17 your office and the lieutenant governor's office</p> <p>18 concerning the creation of the select committee?</p> <p>19 A. I am not.</p> <p>20 Q. Are you aware of any communications between</p> <p>21 your office and the governor's office concerning the</p> <p>22 creation of the select committee?</p> <p>23 A. I am not.</p> <p>24 Q. Have you ever heard a reference to the select</p> <p>25 committee as a "fast track committee"?</p>
<p style="text-align: center;">42</p> <p>1 A. Yes.</p> <p>2 Q. Is he tasked under rules with that</p> <p>3 responsibility?</p> <p>4 A. My understanding is yes.</p> <p>5 Q. And have you ever been involved with the</p> <p>6 creation of a select committee?</p> <p>7 MR. SWEETEN: You can answer yes or no, if</p> <p>8 you've ever -- Do you mean has she had discussions or do</p> <p>9 you mean --</p> <p>10 MS. BERKOWER: I just mean, has she ever</p> <p>11 had any role in the creation of a select committee, just</p> <p>12 as a yes or no question.</p> <p>13 MR. SWEETEN: You can answer yes or no.</p> <p>14 A. No.</p> <p>15 Q. You said that you have heard of the select</p> <p>16 committee on to voter identification and voter fraud.</p> <p>17 Was that -- Did that committee consider a photo ID bill</p> <p>18 in 2011?</p> <p>19 MR. SWEETEN: You can answer.</p> <p>20 A. Yes.</p> <p>21 Q. Did it consider any other bills to your</p> <p>22 knowledge?</p> <p>23 A. To my recollection, no.</p> <p>24 Q. Was it convened for only one legislative</p> <p>25 session?</p>	<p style="text-align: center;">44</p> <p>1 A. No.</p> <p>2 (Exhibit 641 marked.)</p> <p>3 Q. So I have what will be marked as Exhibit 641.</p> <p>4 Have you seen this document before?</p> <p>5 A. It does not look familiar to me.</p> <p>6 Q. What is it -- What does it appear to be?</p> <p>7 A. To me it appears to be a press release.</p> <p>8 Q. Is it from Speaker Straus's office?</p> <p>9 A. I don't know.</p> <p>10 Q. Okay. If you look to the bottom, there's a web</p> <p>11 page where this was printed from. Do you see that?</p> <p>12 A. M-hm. Yes.</p> <p>13 Q. Based on the website address, where does it</p> <p>14 appear that this press release came from?</p> <p>15 A. The website for the Texas House of</p> <p>16 Representatives.</p> <p>17 Q. And does -- the press release at the top of the</p> <p>18 text, it seems to identify it as coming from Speaker</p> <p>19 Straus?</p> <p>20 A. Yes.</p> <p>21 Q. What is the date on the press release?</p> <p>22 A. February 9th, 2011.</p> <p>23 Q. And turning your attention to -- There's a</p> <p>24 break in the middle of the page. Do you see that?</p> <p>25 A. Yes.</p>

45

1 Q. Two lines up from the break, do you see what
2 that says?
3 A. Yes.
4 Q. What does it say?
5 A. "The fast track select committee on voter
6 identification and voter fraud."
7 Q. And what does this press release seem to do as
8 a general matter based on the title and -- I should have
9 said you can read the whole thing if you'd like. Take a
10 moment since you are not familiar with it.
11 A. You asked what it appears to do?
12 Q. Yes.
13 MR. SWEETEN: You can testify about the
14 document that she's put in front of you, but don't -- as
15 you are doing so, do not reveal any sort of motivations
16 of the legislature with respect to this press release.
17 She can ask you about the document. As long as you are
18 not revealing privilege, you can answer.
19 A. Okay. It appears to announce a list of
20 committees to the public.
21 Q. For the 2011 legislative session?
22 A. Yes.
23 Q. And the select committee on voter
24 identification and voter fraud is listed. I think it's
25 where we just read from. It's on the first page before

46

1 the break.
2 MR. SWEETEN: I think it's also here on
3 the second page.
4 MS. BERKOWER: I'm sorry. It's No. 38 on
5 the second page too.
6 A. Yes.
7 Q. But on the first page, it's identified as a
8 fast track committee; is that accurate?
9 A. I don't know if I would say identified.
10 Q. Well, the press release says, "Key facts on
11 committees. Fast track select committee on voter
12 identification and voter fraud." Is that accurate?
13 A. Yes.
14 Q. So does the pretty release identify the select
15 committee on voter identification and voter fraud as a
16 fast track committee?
17 A. According to the words on the page, yes.
18 Q. Okay. Does the press release identify any
19 other committees as fast track committees? And take
20 your time to review it, if you'd like.
21 A. I don't see any other statements to that effect
22 in the document.
23 Q. Does this press release seem to identify all of
24 the committees that were announced for the 2011
25 legislative session?

47

1 A. Yes.
2 Q. And in your -- in your memory, can you think of
3 any other committees that you've heard identified as
4 fast track committees in the time you've worked in the
5 legislature?
6 MR. SWEETEN: In a public setting such as
7 this?
8 MS. BERKOWER: Yes.
9 MR. SWEETEN: You can answer.
10 A. I don't recall.
11 Q. Okay. Do you remember any other bills
12 submitted during the 82nd legislature that addressed
13 mail-in voter fraud?
14 A. I know there were some pieces of legislation I
15 don't recall the bill numbers.
16 Q. Do you remember what committee they were
17 referred to?
18 A. I believe House committee on elections.
19 Q. So they were not referred to the select
20 committee?
21 A. Not that I recall, but I could be wrong.
22 Q. I think though we -- you said before that the
23 select committee only considered one bill. Is that
24 accurate?
25 A. Only considered in public hearing, one bill,

48

1 yes. To my knowledge, yes.
2 Q. Do you remember if more than one bill was
3 actually referred to the select committee as well?
4 A. I think there were more than one referred, but
5 I can't recall specifically.
6 Q. All right. I have what's going to be marked --
7 This actually has been used a number of times, but maybe
8 we'll mark it with a new number anyway or 431. Do you
9 know what this is?
10 A. Yes.
11 Q. What is this?
12 A. It looks like it is a printout from the
13 committee website showing specific legislation referred
14 to that committee.
15 Q. And how many bills are referred to that
16 committee?
17 A. From this document, one.
18 Q. And are we talking about the select committee
19 on voter identification, voter fraud?
20 A. According to this document, yes.
21 Q. Do you know who decides what bills are referred
22 to what committee?
23 A. To my knowledge, it is the parliamentarian, the
24 House parliamentarian.
25 Q. Are there official criteria by which she

<p style="text-align: center;">49</p> <p>1 decides where things go?</p> <p>2 A. I don't know.</p> <p>3 Q. Are you familiar with the Federal Voting Rights</p> <p>4 Act?</p> <p>5 A. I'm aware there is a Federal Voting Rights Act.</p> <p>6 Q. What is your understanding of the Federal</p> <p>7 Voting Rights Act?</p> <p>8 A. My understanding is that it exists.</p> <p>9 Q. Okay. Do you believe that compliance with the</p> <p>10 Federal Voting Rights Act is an important consideration</p> <p>11 for the legislature?</p> <p>12 MR. SWEETEN: You are asking for her</p> <p>13 mental thoughts, impressions. I think that would be</p> <p>14 subject to the legislative privilege as to whether she</p> <p>15 believed it's important, so I'm going to instruct you</p> <p>16 not to answer the question.</p> <p>17 Q. Do you know if the legislature considers the</p> <p>18 Federal Voting Rights Act when it makes law?</p> <p>19 MR. SWEETEN: Same instruction. You can</p> <p>20 refer to matters of the public record in answering the</p> <p>21 question, but do not reveal thought processes, mental</p> <p>22 impressions, opinions regarding legislation.</p> <p>23 A. I'd have to look at the public record.</p> <p>24 Q. Based on the public record, do you remember any</p> <p>25 discussion about the Federal Voting Rights Acts'</p>	<p style="text-align: center;">51</p> <p>1 Have you ever given any legal advice concerning the</p> <p>2 Federal Voting Rights Act as part of your job?</p> <p>3 A. Yes.</p> <p>4 Q. Have you ever given any policy advice</p> <p>5 concerning the Federal Voting Rights Act as part of your</p> <p>6 job?</p> <p>7 A. Yes.</p> <p>8 Q. And I guess I should have asked you this</p> <p>9 before, but as a general matter without revealing any</p> <p>10 specific information you have communicated to your boss</p> <p>11 how do you distinguish between legal and policy rights?</p> <p>12 A. That's a tough one. I'm trying to think of a</p> <p>13 way to describe it. I guess the -- I don't really know</p> <p>14 how to describe it. It's rare, I think, for -- in my</p> <p>15 mind to give, I guess, legal advice. I give more policy</p> <p>16 advice than discussing the effect legislation would have</p> <p>17 on -- on current situations, current groups.</p> <p>18 MR. SWEETEN: If you can't answer without</p> <p>19 giving the substance of any advice, then don't answer,</p> <p>20 but if you can answer as a general matter what in your</p> <p>21 mind is the distinction between policy and --</p> <p>22 THE WITNESS: General matter. I don't</p> <p>23 know.</p> <p>24 MR. SWEETEN: Okay.</p> <p>25 A. I don't know.</p>
<p style="text-align: center;">50</p> <p>1 requirements?</p> <p>2 A. Not specifically. I believe that the Federal</p> <p>3 Voting Rights Act was discussed in the public record. I</p> <p>4 don't recall specifics.</p> <p>5 Q. And I think I asked you as a general matter if</p> <p>6 you remembered any public discussion about the Federal</p> <p>7 Voting Rights Act and it seems that you do. So what --</p> <p>8 in connection with what bill do you remember public</p> <p>9 discussion of the Federal Voting Rights Act?</p> <p>10 A. About Senate Bill 14.</p> <p>11 Q. Do you remember a public discussion of the</p> <p>12 Federal Voting Rights Act with respect to any other</p> <p>13 election related bills?</p> <p>14 A. Senate Bill 362 in 2009, and I think that's all</p> <p>15 I can think of.</p> <p>16 Q. Okay. Have you ever given or received any</p> <p>17 legal advice concerning the Federal Voting Rights Act?</p> <p>18 MR. SWEETEN: Don't reveal matters of</p> <p>19 privilege, but in answering the question, don't give any</p> <p>20 substance. She's asking if you've given legal advice.</p> <p>21 You can answer that yes or no.</p> <p>22 A. Can you clarify what you mean by legal advice?</p> <p>23 Q. Well, I guess I actually asked sort of a</p> <p>24 two-part question, and Patrick's right, it is a yes or</p> <p>25 no question, so I'll break it down and make it clear.</p>	<p style="text-align: center;">52</p> <p>1 Q. Would you categorize -- Would you say you give</p> <p>2 more than policy advice than legal advice in your mind?</p> <p>3 A. Yes.</p> <p>4 Q. What's the division roughly percentage-wise?</p> <p>5 A. Roughly I would probably say 95 percent policy.</p> <p>6 Q. Are you familiar with a Federal law called The</p> <p>7 Help America Vote Act?</p> <p>8 A. Yes, I know it exists.</p> <p>9 Q. Do you know any of its terms?</p> <p>10 A. I don't recall any specifics.</p> <p>11 Q. Do you know if HAVA has identification</p> <p>12 requirements for voter registration?</p> <p>13 A. I don't know.</p> <p>14 Q. Were you aware of a Supreme Court decision in</p> <p>15 2008 in -- concerning the Indiana Voter Identification</p> <p>16 law called Crawford versus Marion County Board of</p> <p>17 Elections?</p> <p>18 MR. SWEETEN: In answering the question,</p> <p>19 if it would reveal your analysis, your process in</p> <p>20 evaluating legislation, do not reveal that. That would</p> <p>21 be subject to the legislative privilege including mental</p> <p>22 thoughts, mental impressions, opinions, motivation about</p> <p>23 recommendation. So if you reveal that, then don't</p> <p>24 answer the question as posed.</p> <p>25 Q. I think I just asked a yes or no question. And</p>

<p style="text-align: center;">57</p> <p>1 A. No.</p> <p>2 Q. Do you know people in the Texas legislature or</p> <p>3 their staff who have?</p> <p>4 A. Not specifically.</p> <p>5 Q. Has your office ever received any documents</p> <p>6 from ALEC related to voter ID?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did ALEC ever you any technical assistance on</p> <p>9 voter ID legislation?</p> <p>10 A. No.</p> <p>11 Q. Are you familiar with the national conference</p> <p>12 of state legislators?</p> <p>13 A. Yes.</p> <p>14 Q. Are you a member of that?</p> <p>15 A. No.</p> <p>16 Q. Have you ever attended any of their meetings?</p> <p>17 A. Yes.</p> <p>18 Q. When was that?</p> <p>19 A. In 2009, if I recall correctly, and 2011, if I</p> <p>20 recall correctly.</p> <p>21 Q. Did any of the meetings that you attended</p> <p>22 address voter ID issues?</p> <p>23 A. I don't recall.</p> <p>24 Q. Are there any other groups that focus on policy</p> <p>25 advice or assistance to legislators that you belong to?</p>	<p style="text-align: center;">59</p> <p>1 Q. And under current law, voters are required to</p> <p>2 obtain a photo ID; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. So if a voter lost her voter registration card,</p> <p>5 she could present ID from a wide-range of IDs like the</p> <p>6 list you just mentioned?</p> <p>7 A. That's my understanding.</p> <p>8 Q. And some of those are non-photo ID?</p> <p>9 A. Yes.</p> <p>10 Q. And the voter could still vote a regular</p> <p>11 ballot; is that correct?</p> <p>12 A. That's my understanding.</p> <p>13 Q. Do you know of any evidence in the public</p> <p>14 record that establishes that the current system for</p> <p>15 verifying an identity of a voter is not effective?</p> <p>16 MR. SWEETEN: I'm going to object to the</p> <p>17 question. It calls for matters of legislative</p> <p>18 privilege. Don't reveal your thoughts, mental</p> <p>19 impressions or analysis about a bill. I think when you</p> <p>20 are asking her the question, you are asking her to weigh</p> <p>21 the evidence that you heard --</p> <p>22 MS. BERKOWER: Wait. Patrick, I'm sorry</p> <p>23 to interrupt you. If she can read back the</p> <p>24 question, I started the question with as part of the</p> <p>25 public record.</p>
<p style="text-align: center;">58</p> <p>1 A. No.</p> <p>2 Q. Do you know what the current system is under</p> <p>3 state law for determining how to verify the identity of</p> <p>4 a voter?</p> <p>5 MR. SWEETEN: You can answer as to your</p> <p>6 understanding of current law.</p> <p>7 A. To identify -- Can you repeat it? I'm sorry.</p> <p>8 Q. Sure. What is the current system under Texas</p> <p>9 law for determining the identity of a voter?</p> <p>10 A. Under current law my understanding is a</p> <p>11 certain -- they can bring certain documents to the</p> <p>12 polling place with them.</p> <p>13 Q. Do you know what those documents are?</p> <p>14 A. Off the top of my head, a voter registration</p> <p>15 card, a utility bill, a phone bill, a bank statement, a</p> <p>16 photo ID and that's all I can think of.</p> <p>17 Q. So -- And correct me if I'm wrong. In your</p> <p>18 understanding of current law is a voter can show a voter</p> <p>19 registration card or if they don't have the voter</p> <p>20 registration card, there are a variety of things they</p> <p>21 could show, some of which you just listed.</p> <p>22 A. That's my understanding.</p> <p>23 Q. Upon registering, do you know if a county mails</p> <p>24 a voter registration card to the voter?</p> <p>25 A. Yes, that's my understanding.</p>	<p style="text-align: center;">60</p> <p>1 MR. SWEETEN: Understand. I heard a lot</p> <p>2 of that yesterday, a lot of prefaces with the public</p> <p>3 record, but what we can't do is -- She can refer to</p> <p>4 matters of the public record, but what she won't do is</p> <p>5 go to the matters of the public record and select an</p> <p>6 analysis and give a qualitative judgment about what was</p> <p>7 in the record. If you want to ask her if something</p> <p>8 exists, if someone said something the fact of the</p> <p>9 communication, she can testify, but there won't be any</p> <p>10 analysis of what was said on the public record, and I</p> <p>11 think your question did have an analysis portion.</p> <p>12 MS. BERKOWER: I think I asked or I</p> <p>13 intended to ask -- and we could have the court reporter</p> <p>14 read back the question, but I think I asked just as a</p> <p>15 matter of public record was there evidence presented</p> <p>16 that the current system of identifying voters at the</p> <p>17 polls is ineffective.</p> <p>18 MR. SWEETEN: You can testify as to</p> <p>19 matters of the public record. I mean, don't weigh the</p> <p>20 evidence, but you can say if there was testimony about</p> <p>21 an issue. Is that clear enough? I mean, is that fair</p> <p>22 enough?</p> <p>23 MS. BERKOWER: That's fine. I think that</p> <p>24 was the call of this particular question.</p> <p>25 A. Yes, there was testimony on that issue.</p>

<p style="text-align: center;">61</p> <p>1 Q. What was that testimony?</p> <p>2 A. I don't specifically recall.</p> <p>3 Q. Do you remember who provided that testimony?</p> <p>4 A. Not specifically.</p> <p>5 Q. What was the purpose of -- of requiring a photo</p> <p>6 ID given the law already in place?</p> <p>7 MR. SWEETEN: She can talk about -- I'll</p> <p>8 let her testify as to her understanding of the general</p> <p>9 purpose of a bill, but not -- you're having her weigh</p> <p>10 why this when this is in place, and that is a little</p> <p>11 beyond -- that would be subject to the legislative</p> <p>12 privilege. So with that instruction, I would instruct</p> <p>13 her not to answer that question as phrased, but I will</p> <p>14 work with you to try to get at what you're asking.</p> <p>15 A. Can you repeat the question?</p> <p>16 Q. What was the general purpose of photo ID in</p> <p>17 Texas?</p> <p>18 A. To deter voter fraud.</p> <p>19 Q. So in 2005, just because I didn't -- I'm not</p> <p>20 entirely sure of which person you worked for, can you</p> <p>21 just tell me which person you worked for in the</p> <p>22 legislature in 2005?</p> <p>23 A. Sure. Peggy Hamric.</p> <p>24 Q. And she's a representative?</p> <p>25 A. Yes. No longer, but she was then.</p>	<p style="text-align: center;">63</p> <p>1 A. I don't recall.</p> <p>2 Q. Do you remember hearing any public statements</p> <p>3 about House Bill 1706?</p> <p>4 A. I don't.</p> <p>5 Q. Do you have any memories at all connected to</p> <p>6 House Bill 1706?</p> <p>7 A. I have none.</p> <p>8 Q. Okay. Now, in the 2007 legislature, who did</p> <p>9 you work for?</p> <p>10 A. 2007? I believe it was Senator Eltife.</p> <p>11 Q. Senator Eltife. And for your work for Senator</p> <p>12 Eltife, did you work on any election related bills?</p> <p>13 A. I don't recall working on any election related</p> <p>14 bills.</p> <p>15 Q. Was he on -- on a committee that addressed</p> <p>16 election related bills?</p> <p>17 A. Not that I recall.</p> <p>18 Q. So did you have any involvement with any</p> <p>19 election related bills when you worked for him?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Do you remember hearing -- Do you remember</p> <p>22 hearing about House Bill 218 in that legislative</p> <p>23 session?</p> <p>24 A. Not that I recall.</p> <p>25 Q. Do you know -- And you were present on the</p>
<p style="text-align: center;">62</p> <p>1 Q. Where did she -- What House district did she</p> <p>2 represent?</p> <p>3 A. I don't recall. She was from Houston.</p> <p>4 Q. So like around Houston area?</p> <p>5 A. M-hm. Sorry. Yes.</p> <p>6 Q. Are you familiar with the voter ID bill that</p> <p>7 was introduced in the House in 2005?</p> <p>8 A. I am not.</p> <p>9 Q. Did you work on election related issues for</p> <p>10 Representative Hamric?</p> <p>11 A. Not that I recall.</p> <p>12 MS. BERKOWER: Okay. Do you want to take</p> <p>13 a break? We've been going for a little while.</p> <p>14 MR. SWEETEN: Sure.</p> <p>15 MS. BERKOWER: Like 5 minutes?</p> <p>16 MR. SWEETEN: Yeah, that sounds good.</p> <p>17 (Recess from 11:10 a.m. to 11:25 a.m.)</p> <p>18 Q. (BY MS. BERKOWER) So you said that you were</p> <p>19 not familiar with House Bill 1706 from the 2005</p> <p>20 legislative session; is that accurate?</p> <p>21 A. Yes.</p> <p>22 Q. Do you remember if -- even if you didn't work</p> <p>23 on it yourself, do you remember if you were present</p> <p>24 during the vote or any of the floor debate on House Bill</p> <p>25 1706?</p>	<p style="text-align: center;">64</p> <p>1 House Bill when the bill -- Sorry. You were in the</p> <p>2 Senate then. Let me think about this for a second.</p> <p>3 Was Senator Eltife on the state affairs</p> <p>4 committee by any chance?</p> <p>5 A. I don't remember.</p> <p>6 Q. Do you remember being present for any hearing</p> <p>7 in the -- in the Senate state affairs committee on House</p> <p>8 Bill 218?</p> <p>9 A. I don't.</p> <p>10 Q. Do you remember any public statements made</p> <p>11 about House Bill 218?</p> <p>12 A. I don't.</p> <p>13 Q. As a general matter, were you following voter</p> <p>14 ID legislation around that time?</p> <p>15 A. I don't recall following any voter ID</p> <p>16 legislation.</p> <p>17 Q. When do you first remember starting to follow</p> <p>18 voter ID legislation?</p> <p>19 MR. SWEETEN: If answering it would reveal</p> <p>20 your thoughts and mental processes, don't answer the</p> <p>21 question. But if -- I think the question is vague too</p> <p>22 as phrased, so I'm going to object to the question</p> <p>23 itself, but also instruct you not to reveal matters of</p> <p>24 privilege in answering the question. You can answer if</p> <p>25 you want.</p>

<p style="text-align: center;">65</p> <p>1 A. When do I first remember following the issue?</p> <p>2 February 2009.</p> <p>3 Q. Okay. So is it safe to say you have no memory</p> <p>4 at all of House Bill 218?</p> <p>5 A. It's safe to say that.</p> <p>6 Q. Now, I guess one thing I'm curious to know is</p> <p>7 when you started working on -- for Speaker Straus and</p> <p>8 you were staffed on the elections committee, did you</p> <p>9 ever look at prior legislation or familiarize yourself</p> <p>10 with prior legislation on the general topics for the</p> <p>11 committees you were staffed on to update yourself on</p> <p>12 those issues?</p> <p>13 MR. SWEETEN: Did she as a general matter</p> <p>14 review prior bills on committees that she worked on?</p> <p>15 MS. BERKOWER: Yes.</p> <p>16 MR. SWEETEN: Objection to the question as</p> <p>17 compound. You can answer to the extent you are able.</p> <p>18 A. Generally speaking, sometimes.</p> <p>19 Q. Do you remember ever reviewing House Bill 218</p> <p>20 or House Bill 1706 for that reason?</p> <p>21 A. I do not recall reviewing either of those</p> <p>22 pieces of legislation.</p> <p>23 Q. Okay. So bringing us up to 2009, are you aware</p> <p>24 of a photographic voter identification bill that was</p> <p>25 introduced in the 81st Texas legislature in 2009?</p>	<p style="text-align: center;">67</p> <p>1 A. I do recall discussions. I don't recall</p> <p>2 specifics.</p> <p>3 Q. Do you remember any public statements</p> <p>4 concerning noncitizen voting around that time?</p> <p>5 A. I recall public statements being made, but I</p> <p>6 don't remember specifics.</p> <p>7 Q. Public statements about noncitizen voting?</p> <p>8 A. Yes.</p> <p>9 Q. Do you remember who made those statements?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you remember where you heard those public</p> <p>12 statements?</p> <p>13 A. In hearings -- In committee hearings.</p> <p>14 Q. Were those public statements about noncitizens</p> <p>15 voting made by our legislators?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remember which legislators made those</p> <p>18 public statements?</p> <p>19 A. Not specifically.</p> <p>20 Q. Do you remember which committee hearing you</p> <p>21 heard those public statements?</p> <p>22 A. The hearing on Senate Bill 362 and on -- and in</p> <p>23 the hearing on Senate Bill 14.</p> <p>24 Q. Okay. Well, I think I'm just now asking on</p> <p>25 Senate Bill 362 in 2009.</p>
<p style="text-align: center;">66</p> <p>1 MR. SWEETEN: You can testify about your</p> <p>2 awareness of a bill filed.</p> <p>3 A. Yes, I was aware.</p> <p>4 Q. Who introduced that bill?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you remember any public statements about why</p> <p>7 the bill was introduced?</p> <p>8 A. Yes.</p> <p>9 Q. What are those statements that you recall?</p> <p>10 A. I don't recall specifics, but I know the</p> <p>11 reasons for introducing the legislation were discussed.</p> <p>12 Q. Publicly?</p> <p>13 A. Publicly, yes.</p> <p>14 Q. And what are the reasons that you remember</p> <p>15 being publicly discussed?</p> <p>16 A. Deterrence of voter fraud.</p> <p>17 Q. Was there a particular type of voter fraud that</p> <p>18 was specified in those public statements?</p> <p>19 MR. SWEETEN: She's asking about public</p> <p>20 statements, so matters of the public record you can</p> <p>21 answer.</p> <p>22 A. Yes. I recall statements being made about</p> <p>23 deterring in-person voter fraud.</p> <p>24 Q. Do you recall statements about mail-in voter</p> <p>25 fraud around that -- in connection with that bill?</p>	<p style="text-align: center;">68</p> <p>1 A. Okay.</p> <p>2 Q. You said there were public statements by</p> <p>3 legislators at that time concerning noncitizen voting;</p> <p>4 is that accurate?</p> <p>5 A. Yes.</p> <p>6 Q. And I think because -- I'm not sure that you</p> <p>7 were delineating between 2009 and 2011 when I asked you</p> <p>8 this before. I'll ask you again.</p> <p>9 A. Sorry.</p> <p>10 Q. It's okay. In 2009, do you remember which</p> <p>11 legislators made public statements about noncitizen</p> <p>12 voting?</p> <p>13 A. I don't recall specifically who did.</p> <p>14 Q. But it was during the committee hearings on</p> <p>15 362?</p> <p>16 A. To my recollection, yes.</p> <p>17 Q. Okay. And did you attend those hearings</p> <p>18 yourself?</p> <p>19 A. Yes.</p> <p>20 Q. Did you determine all of the hearings on 362?</p> <p>21 A. I attended the House hearings and most of the</p> <p>22 hearings on the Senate floor.</p> <p>23 Q. Do you usually follow legislation in the Senate</p> <p>24 for -- when you think -- Well, let me start that over.</p> <p>25 Under what circumstances do you follow</p>

<p style="text-align: center;">81</p> <p>1 document confirming birth that is admissible in a court 2 of law and establishes the person's identity? 3 A. Yes. 4 Q. Does it include US citizenship papers issued to 5 the person? 6 A. Yes. 7 Q. And an original or certified copy of the 8 person's marriage license or divorce decree? 9 A. Yes. 10 Q. Court records of the person's adoption, name 11 change or sex change are also allowed; is that correct? 12 A. Yes. 13 Q. An identification card issued to the person by 14 a government entity of this state, meaning Texas, or the 15 United States for the purpose of obtaining public 16 benefits including veteran's benefits, Medicaid or 17 Medicare? 18 A. Yes. 19 Q. A temporary driving permit issued to the person 20 by DPS? 21 A. Yes. 22 Q. A license issued to the person by the Federal 23 Aviation Administration or other authorized agency of 24 the US? 25 A. Yes.</p>	<p style="text-align: center;">83</p> <p>1 MR. SWEETEN: Don't guess or speculate 2 when answering the question. 3 A. I don't know. 4 Q. What state entities would you consider not to 5 be institutions of the state? Are there any? 6 MR. SWEETEN: Aren't you kind of asking 7 for her personal impressions now of what the bill is 8 intending -- 9 MS. BERKOWER: I'll actually withdraw that 10 question. 11 Q. (BY MS. BERKOWER) You said you attended college 12 and law school here in Texas; is that correct? 13 A. Yes. 14 Q. Did you go to a public school or a private 15 college for law school? 16 A. I went to a public college and a private law 17 school. 18 Q. And I forget. What was the name of your public 19 college? 20 A. It was Southwest Texas. It's now changed to 21 Texas State. 22 Q. Texas State? I guess in your view and not 23 necessarily drawing on your experience as a staff member 24 for Speaker Straus, but your experience as a student, 25 was that -- was Texas State an institution of the state?</p>
<p style="text-align: center;">82</p> <p>1 Q. A library card containing the person's name 2 issued by a public library in Texas? 3 A. Yes. 4 Q. Or a hunting or fishing license issued by the 5 Texas -- I guess it doesn't specify the Texas Department 6 of Parks and Wildlife, but by the Parks and Wildlife 7 Department? 8 A. Yes. 9 Q. Okay. So based on what we went through, it 10 looks like there are approximately 19 categories of 11 known ID that a voter could use as proof of 12 identification; is that accurate? 13 A. According to this document, yes. 14 Q. Do you know if a student ID would be permitted 15 under this bill? And I guess I can direct that question 16 specifically to Line 20 on Page 6 that allows for a 17 photo ID issued by an agency, institution or political 18 subdivision of the state. 19 A. It doesn't specifically a school ID. 20 Q. Are some of the universities in Texas 21 institutions of the state? 22 A. I guess it depends on the definition of 23 institution. 24 Q. It could -- It could be considered an 25 institution of the state?</p>	<p style="text-align: center;">84</p> <p>1 A. It depends on the definition of institution. 2 Q. Did you get something called in state tuition 3 for attending there? 4 A. Yes. 5 Q. Did you have a photo ID issued by that college? 6 A. Yes. 7 Q. What was the general legislative purpose of 8 SB362? 9 A. In general, to deter voter fraud. 10 Q. Did the legislature hear any public testimony 11 about voter fraud in connection with its consideration 12 of SB362? 13 MR. SWEETEN: You can testify about 14 matters of the public record. 15 A. Did they -- Can you repeat that? Sorry. 16 Q. Do you mind reading -- I'll do my best to 17 recreate it. As a matter of public record, did the 18 legislature hear testimony about voter fraud? 19 MR. SWEETEN: You can testify about 20 matters of the public record. 21 A. Yes. 22 Q. And this is in connection with SB362? 23 A. Yes. 24 Q. What was that public evidence? 25 MR. SWEETEN: You can testify about what</p>

<p style="text-align: center;">85</p> <p>1 was testified to, what was said at a public hearing.</p> <p>2 A. I recall hearing testimony. I don't remember</p> <p>3 exactly who said it, but there was testimony about</p> <p>4 in-person voter fraud.</p> <p>5 Q. What was the general -- Like do you remember</p> <p>6 generally what kind of testimony it was, who came, where</p> <p>7 they were from? Was it a law enforcement official?</p> <p>8 A. I do recall I think it was just a citizen who</p> <p>9 was a -- volunteered to be a poll watcher who made a</p> <p>10 statement that they saw one specific person vote more</p> <p>11 than once and that person had certain tatoos that made</p> <p>12 them easily recognizable.</p> <p>13 Q. Do you know if that incident was ever referred</p> <p>14 to law enforcement authorities?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know if that individual who volunteered</p> <p>17 as a poll watcher and related that incident was</p> <p>18 affiliated with any sort of interest group?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know if he was affiliated with the King</p> <p>21 Street Patriots?</p> <p>22 A. I don't know.</p> <p>23 Q. What other evidence concerning voter fraud was</p> <p>24 presented on the public record in connection with SB362?</p> <p>25 A. I recall -- Again, I don't know the specific</p>	<p style="text-align: center;">87</p> <p>1 would be appropriate in a voter identification bill to</p> <p>2 solve in-person voting -- in-person voter fraud? Sorry.</p> <p>3 A. Yes, that was discussed.</p> <p>4 Q. How about in-person voting -- have a problem</p> <p>5 with in-person voting? You said you don't remember it</p> <p>6 was discussed?</p> <p>7 A. I do remember it being discussed.</p> <p>8 Q. What was said about it on the public record?</p> <p>9 A. I don't recall specifics. I remember that</p> <p>10 topic being discussed.</p> <p>11 Q. Do you remember a debate over -- as part of the</p> <p>12 public record, do you remember any debate over whether</p> <p>13 certain types of identification should or shouldn't be</p> <p>14 included in the bill?</p> <p>15 A. Yes.</p> <p>16 Q. What was that debate?</p> <p>17 MR. SWEETEN: Just matters of the public</p> <p>18 record.</p> <p>19 A. I remember in general just different</p> <p>20 identification being discussed, and I don't remember</p> <p>21 specifics.</p> <p>22 Q. Do you remember whether it was discussed on the</p> <p>23 public record as to whether the terms of this particular</p> <p>24 bill, SB362, would solve problems related to noncitizens</p> <p>25 voting?</p>
<p style="text-align: center;">86</p> <p>1 person, but I recall testimony regarding people from</p> <p>2 across the border -- Texas-Mexico border voting -- being</p> <p>3 handed a voter registration card that didn't belong to</p> <p>4 them to go in and vote.</p> <p>5 Q. Do you remember who presented that evidence?</p> <p>6 A. I don't recall the specific person.</p> <p>7 Q. Do you know if that incident as related to the</p> <p>8 legislature was ever referred to law enforcement</p> <p>9 authorities?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you remember if the person who presented</p> <p>12 that evidence advocated for voter ID as a means of</p> <p>13 deterring noncitizen voting?</p> <p>14 A. I don't recall, no.</p> <p>15 Q. Do you remember if any evidence was presented</p> <p>16 in the public record indicating that SB362 would solve</p> <p>17 problems relating to in-person voting fraud?</p> <p>18 A. I do recall a discussion about that topic. I</p> <p>19 don't recall specifically who said it.</p> <p>20 Q. Do you remember how -- Do you remember if there</p> <p>21 was testimony and, if so, what that testimony was about</p> <p>22 how specifically 362 would solve the problem?</p> <p>23 A. I don't recall specifically.</p> <p>24 Q. Do you recall whether there was a discussion in</p> <p>25 the public record about the specific types of IDs that</p>	<p style="text-align: center;">88</p> <p>1 A. I don't recall.</p> <p>2 Q. Do you remember if Speaker Straus voted for or</p> <p>3 against SB362?</p> <p>4 A. As a general matter, the speaker doesn't vote</p> <p>5 on legislation.</p> <p>6 Q. Oh, why not? Or, I mean, I don't mean to -- I</p> <p>7 guess I can ask that --</p> <p>8 MR. SWEETEN: As a general matter?</p> <p>9 Q. -- as a general matter.</p> <p>10 A. I don't know if it's part of the House rules or</p> <p>11 if it's just a policy, but my understanding in the Texas</p> <p>12 House is that most speakers generally do not vote on</p> <p>13 legislation.</p> <p>14 Q. Are there exceptions to that?</p> <p>15 A. Under the House rules, I think if there's a tie</p> <p>16 in the votes, I think the speaker can vote. I don't</p> <p>17 know that he's required to.</p> <p>18 Q. Do you remember the speaker voting in the</p> <p>19 incident of a tie in your time working for him?</p> <p>20 A. I don't.</p> <p>21 Q. Is the House rule concerning the speaker's</p> <p>22 ability to vote, is that -- does that mean he actually</p> <p>23 cannot vote unless there's a tie?</p> <p>24 A. I don't know if it's a House rule or if it's</p> <p>25 just sort of a policy that different speakers have had.</p>

89

1 Q. Is it Speaker Straus's policy not to vote
2 unless there's a tie?

3 MR. SWEETEN: Objection. Calls for
4 speculation.

5 Q. If you know.

6 A. I don't know.

7 Q. So you said that you did follow SB362 when
8 the -- it was in the committee as a whole in the Senate;
9 is that correct?

10 A. Yes.

11 Q. Did you attend or listen to any of the debates?

12 A. Yes.

13 Q. Did you have any communications with senators
14 about SB362 while the bill was in the Senate without
15 revealing the content of what you discussed?

16 A. Not that I recall.

17 Q. Did you have any communications with Senate
18 staff about SB362 while the bill was in the Senate?

19 A. Yes.

20 Q. Who did you communicate with?

21 A. Brian Hebert. I think that's all I can think
22 of. He's the only one that I'm recalling right now.

23 Q. When did you call him?

24 A. We talked in person on the Senate floor.

25 Q. Are you allowed to be on the Senate floor?

90

1 A. We are. The speaker's office has a special
2 badge we have to wear to go over there.

3 Q. Did you have any communications with Janice
4 McCoy about SB362 while the bill was in the Senate?

5 A. I don't recall. It's possible.

6 Q. Did you have any communications with either
7 Mr. Hebert or Ms. McCoy even about SB362 before it was
8 considered by the committee as a whole?

9 A. With Brian Hebert, yes.

10 Q. When did you communicate with him about SB362
11 prior to its hearing in the committee as a whole?

12 A. I don't know a specific date. My
13 communications with him were ongoing throughout the
14 session.

15 Q. Was it -- Did you communicate with him about
16 SB362 before it was filed?

17 A. Not that I recall.

18 Q. Did you communicate with Janice McCoy about
19 SB362 before it was filed?

20 A. Not that I recall.

21 Q. So you said you attended the committee of the
22 whole hearings. Do you remember did you attend a
23 hearing that occurred around or on March 10, 2009?

24 A. If that was the date of the committee of the
25 whole, then yes.

91

1 Q. Do you remember if Senator Fraser, the bill's
2 sponsor, was asked questions during the hearing you
3 attended?

4 A. Yes.

5 Q. Do you remember hearing Senator Fraser ask
6 whether an analysis of the racial composition of voters
7 without a driver's license had been conducted?

8 MR. SWEETEN: You can refer to matters of
9 the public record.

10 A. I don't recall.

11 Q. Do you know if any such analysis was conducted?

12 MR. SWEETEN: Don't reveal -- Don't answer
13 that question. That would reveal legislative privilege.
14 Instruct not to answer --

15 MS. BERKOWER: Okay.

16 MR. SWEETEN: -- if you know of analysis
17 conducted.

18 MS. BERKOWER: Just asking her knowledge,
19 not the content of that analysis, if it actually was
20 conducted. Not asking --

21 MR. SWEETEN: Yeah. I think that that
22 goes to her mental processes as to her knowledge of
23 analysis conducted, so I think that's subject to the
24 privilege.

25 Q. (BY MS. BERKOWER) Okay. Are you going to

92

1 follow his instruction?

2 A. Yes.

3 Q. So there's more as a general matter and without
4 connection to any legislation, but in your experience
5 working in the legislature, if a bill's sponsor has
6 asked about certain analysis or to conduct certain
7 analysis concerning his or her bill, does the bill
8 sponsor have an obligation to follow up to seek the
9 information?

10 MR. SWEETEN: Don't answer the question.
11 It calls for speculation and it's irrelevant, and it
12 also could implicate the legislative privilege.

13 MS. BERKOWER: Yeah. I guess I'd rephrase
14 the question. As a matter of legislative procedure or a
15 general matter of legislative process, if -- when bill
16 sponsors are asked to conduct analysis, do they
17 generally conduct that -- the analysis? Is that an
18 acceptable question?

19 MR. SWEETEN: I mean, I think that
20 question is compound. You are asking -- I mean, what
21 possible relevance would it be to have her comment on
22 whether it's appropriate or whether somebody should
23 follow up on a question whether there's not even
24 specificity as to what the legislation is?

25 MS. BERKOWER: She's worked for a number

<p style="text-align: center;">93</p> <p>1 of different legislators, so they've all sponsored</p> <p>2 legislation, and I guess I'm asking for her view of the</p> <p>3 session -- of a request from the floor to conduct</p> <p>4 analysis about a bill and whether those requests are</p> <p>5 generally taken seriously and followed up on or if</p> <p>6 they're not. I think she would know the answer to that.</p> <p>7 MR. SWEETEN: I think you are asking her</p> <p>8 to reveal her mental impressions, opinions about the</p> <p>9 legislative process, about legislation. I mean, I think</p> <p>10 the question -- and for the other reasons I've</p> <p>11 expressed, so I object to the question.</p> <p>12 Q. (BY MS. BERKOWER) Okay. I'll move on then.</p> <p>13 think this one -- and I know -- I just want to be clear.</p> <p>14 I'm doing my best to keep these questions within the</p> <p>15 boundaries of the court's order.</p> <p>16 Do you know if the Department of Public</p> <p>17 Safety ever reported to the legislature about the racial</p> <p>18 analysis of voters who do not have a Texas driver's</p> <p>19 license? And I'm asking that because I think based on</p> <p>20 the court's most recent order, if it doesn't specify</p> <p>21 which legislator requested it or which it was reported</p> <p>22 to, the fact of DPS's ability to transmit to the</p> <p>23 legislature is not privileged.</p> <p>24 MR. SWEETEN: Risa, can you restate that</p> <p>25 question?</p>	<p style="text-align: center;">95</p> <p>1 Q. (BY MS. BERKOWER) Do you remember the question?</p> <p>2 A. Not really.</p> <p>3 Q. So I'm going to do my best to recreate it.</p> <p>4 Okay. Do you know if the Department of Public Safety</p> <p>5 ever -- ever conducted an analysis of the racial</p> <p>6 composition of voters who do not have a Texas driver's</p> <p>7 license and presented that information to the</p> <p>8 legislature without revealing who requested it or to</p> <p>9 whom any specific individual the response was directed?</p> <p>10 A. I don't know.</p> <p>11 MS. BERKOWER: Okay.</p> <p>12 MR. SWEETEN: We're all doing what we're</p> <p>13 supposed to do.</p> <p>14 MS. BERKOWER: All right. We'll move on</p> <p>15 then. So the turning back to --</p> <p>16 MR. PHILLIPS: I'm glad I contributed.</p> <p>17 MS. BERKOWER: Only a group of lawyers</p> <p>18 could spend that much time talking to come up with that.</p> <p>19 Okay.</p> <p>20 Q. (BY MS. BERKOWER) So moving back to the House</p> <p>21 in 2009 -- in April 2009, do you remember if the -- some</p> <p>22 House members signed a pledge circulated by the</p> <p>23 Republican Party of Texas concerning voter ID?</p> <p>24 A. I don't know.</p> <p>25 (Exhibit 642 marked.)</p>
<p style="text-align: center;">94</p> <p>1 MS. BERKOWER: I will do my best to make</p> <p>2 it clear.</p> <p>3 MR. SWEETEN: Can you tell me where in the</p> <p>4 order it specifically says that? Can we pull that out</p> <p>5 because I want to make sure that my --</p> <p>6 MS. BERKOWER: It was this most recent</p> <p>7 order.</p> <p>8 MR. SWEETEN: I've got it.</p> <p>9 MS. BERKOWER: Can we go off the record,</p> <p>10 please?</p> <p>11 (Recess from 12:05 p.m. to 12:10 p.m.)</p> <p>12 MS. BERKOWER: Okay. So we had a</p> <p>13 discussion off the record. Patrick, do you want to</p> <p>14 explain what you just said?</p> <p>15 MR. SWEETEN: Yes. Risa and I had a very</p> <p>16 civil discussion off the record involving the court's</p> <p>17 order, Page 9, and along with Chief Justice Phillips, we</p> <p>18 have reviewed this, and we were -- we were going to</p> <p>19 allow the witness to answer this question, but we also</p> <p>20 had an agreement that to the extent that there's a</p> <p>21 misinterpretation of the order, that in her answering</p> <p>22 this, there would not be any sort of waiver or argument</p> <p>23 with respect to this question. Is that our agreement?</p> <p>24 MS. BERKOWER: That is our agreement.</p> <p>25 MR. SWEETEN: Okay.</p>	<p style="text-align: center;">96</p> <p>1 Q. Okay. We'll mark this as, I guess, 642. I</p> <p>2 know it's been marked before, but I don't have the</p> <p>3 number handy. Do you know what this document is?</p> <p>4 A. It looks like it's a news article.</p> <p>5 Q. State press release. Take a look at the first</p> <p>6 line of the text and take a minute to review the</p> <p>7 document.</p> <p>8 A. You asked if it was a press release?</p> <p>9 Q. Yes.</p> <p>10 A. It looks like it is.</p> <p>11 Q. Is it a -- Is it a press release from the</p> <p>12 Republican Party of Texas?</p> <p>13 A. It appears to be -- It says Page 4 by the</p> <p>14 Republican Party of Texas.</p> <p>15 Q. Does your review of this document refresh your</p> <p>16 recollection as to whether a pledge was circulated by</p> <p>17 the Republican Party of Texas concerning voter ID in</p> <p>18 2009?</p> <p>19 A. No.</p> <p>20 Q. No? Okay. Well, turning your attention to the</p> <p>21 middle of the page, now that you've read it, do you know</p> <p>22 what it is -- just from reading it, do you understand</p> <p>23 what you read?</p> <p>24 A. Yes.</p> <p>25 Q. And what do you understand it to be?</p>

<p style="text-align: center;">97</p> <p>1 MR. SWEETEN: She's asking for your</p> <p>2 interpretation of this document. To the extent that</p> <p>3 would reveal any matter of legislative privilege, don't</p> <p>4 answer the question, but if you can testify without</p> <p>5 revealing that, you can.</p> <p>6 A. I understand it to be a press release paid for</p> <p>7 by the Republican Party of Texas.</p> <p>8 Q. About what topic?</p> <p>9 A. About voter ID.</p> <p>10 Q. The Republican Caucus Members Pledge do Support</p> <p>11 Strong Voter ID Bills. Is that the title of the</p> <p>12 document that I just read?</p> <p>13 A. That is the title of the document.</p> <p>14 Q. Does the document outline principles --</p> <p>15 statement of principles on voter ID?</p> <p>16 A. According to the document, on the statement of</p> <p>17 principles concerning voter ID legislation.</p> <p>18 Q. Are there more principles listed there?</p> <p>19 A. According to the document, yes.</p> <p>20 Q. Does one of these -- does the first principle</p> <p>21 require a -- Does the first principle say, "Ensure a</p> <p>22 valid voter identification is needed to vote"?</p> <p>23 A. Yes.</p> <p>24 Q. And the second says, "Take effect at the next</p> <p>25 possible uniform election date"?</p>	<p style="text-align: center;">99</p> <p>1 Do you remember a review of that?</p> <p>2 A. Yes.</p> <p>3 Q. You testified that that bill allowed voters to</p> <p>4 present non-photo ID; is that correct?</p> <p>5 MR. SWEETEN: I think she testified about</p> <p>6 what the text the of the bill said on 362. Is that what</p> <p>7 you are asking?</p> <p>8 MS. BERKOWER: Yes.</p> <p>9 MR. SWEETEN: You can't testify about your</p> <p>10 impressions of what 362 means or its effect, but you can</p> <p>11 testify about the text of the bill.</p> <p>12 A. The text of the bill allowed non-photo ID.</p> <p>13 Q. Is the safe to say that the text of 362 does</p> <p>14 not match up with Item 1 in this pledge?</p> <p>15 MR. SWEETEN: Based upon the text of the</p> <p>16 language of the bill, you can it -- answer the question,</p> <p>17 but don't give a qualitative judgment as to your</p> <p>18 opinions about your -- the bill. So if you can't answer</p> <p>19 without giving your opinions about it, which would be</p> <p>20 subject to legislative privilege, my instruction to you</p> <p>21 would be not to answer the question.</p> <p>22 A. I'm going to choose not to answer.</p> <p>23 Q. Okay. I can ask it slightly differently.</p> <p>24 SB362 permits non-photo ID; is that correct?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">98</p> <p>1 A. Yes.</p> <p>2 Q. And the third says, "Be free of any</p> <p>3 registration requirements such as same day voting</p> <p>4 registration that dilutes the intent of the bill, which</p> <p>5 is ensuring fair and accurate elections"?</p> <p>6 A. Yes.</p> <p>7 Q. And fourth involves "an increase in criminal</p> <p>8 penalties;" is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know if the speaker was asked to sign</p> <p>11 this pledge by the Republican Party of Texas?</p> <p>12 MR. SWEETEN: Don't reveal any</p> <p>13 communications that the speaker had with any specific</p> <p>14 members. If it would be something that does not involve</p> <p>15 the member or legislative staff and not within the scope</p> <p>16 of privilege, you can answer the question.</p> <p>17 A. I don't know.</p> <p>18 MS. BERKOWER: Okay. And I think to be</p> <p>19 clear, I asked about the party, not the other</p> <p>20 legislators.</p> <p>21 MR. SWEETEN: There's overlap whether</p> <p>22 there's party -- you know, if one of these guys is a</p> <p>23 legislator who's also the head of the party, then I</p> <p>24 think that's why I made the objection.</p> <p>25 Q. Okay. We reviewed SB362 a little while ago.</p>	<p style="text-align: center;">100</p> <p>1 Q. This pledge demands that only valid photo ID is</p> <p>2 needed to vote, correct?</p> <p>3 MR. SWEETEN: You can testify about the</p> <p>4 text of the document.</p> <p>5 A. The document says, "Ensure a valid photo</p> <p>6 identification is needed to vote."</p> <p>7 Q. Did Speaker Straus ever come out publicly to</p> <p>8 support SB362?</p> <p>9 A. Yes.</p> <p>10 Q. Did he in fact publicly support SB362?</p> <p>11 MR. SWEETEN: You can testify about public</p> <p>12 statements that you have knowledge of.</p> <p>13 A. Yes.</p> <p>14 Q. Did he make any public statements in support of</p> <p>15 SB362?</p> <p>16 A. I'm considering letters we wrote to</p> <p>17 constituents as public statements. Is that okay?</p> <p>18 Q. Sure.</p> <p>19 A. Because we did write -- we had constituents</p> <p>20 that wrote in on the topic, and he wrote letters back in</p> <p>21 support.</p> <p>22 Q. With regard to the constituent communications</p> <p>23 your office received about SB362, did you receive</p> <p>24 communications in support of expressing constituents'</p> <p>25 support of the bill?</p>

<p style="text-align: center;">101</p> <p>1 A. Yes.</p> <p>2 Q. What did those constituents say?</p> <p>3 A. I don't recall specifics, but, generally, they</p> <p>4 supported the concept of a -- of the legislation.</p> <p>5 Q. And I guess this is sort of just a basic</p> <p>6 question. Do you get constituent -- When you say</p> <p>7 constituent mail, do you mean only communications from</p> <p>8 people in House District 121 or people all over the</p> <p>9 state?</p> <p>10 A. All over the state.</p> <p>11 Q. Were there any constituents who wrote to the</p> <p>12 speaker who opposed SB362?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you remember any other public statements</p> <p>15 such as to the media that Speaker Straus made in support</p> <p>16 SB362?</p> <p>17 A. I don't specifically recall.</p> <p>18 Q. Do you remember if there was opposition on the</p> <p>19 public record in the House against SB362?</p> <p>20 A. Yes.</p> <p>21 Q. Do you remember who opposed the bill on the</p> <p>22 public record?</p> <p>23 A. On the public record, I recall NAACP, LULAC,</p> <p>24 League of Women Voters, and I know there were individual</p> <p>25 citizens that testified, but I don't know their names.</p>	<p style="text-align: center;">103</p> <p>1 Q. Do you remember anything about the bill that</p> <p>2 Representative Smith introduced concerning voter ID?</p> <p>3 A. Specific? I don't --</p> <p>4 Q. Do you remember anything generally about the</p> <p>5 bill just as it was introduced as part of the public</p> <p>6 record?</p> <p>7 A. No, I don't recall specifics. I would be</p> <p>8 guessing.</p> <p>9 Q. During this election -- Sorry. During this</p> <p>10 legislative session, you were Speaker Straus's liaison</p> <p>11 to the election committee; is that accurate?</p> <p>12 A. Yes.</p> <p>13 Q. And you did --</p> <p>14 A. Sorry. Are we still on 2009?</p> <p>15 Q. 2009.</p> <p>16 A. Okay. Cool.</p> <p>17 Q. And you said earlier you did have ongoing</p> <p>18 communications with Representative Smith and his staff</p> <p>19 throughout the 2009 legislative session?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know if Speaker Straus ever publicly</p> <p>22 came out in support or against Representative Smith's</p> <p>23 bill?</p> <p>24 A. I don't recall.</p> <p>25 Q. As a matter of public record, do you know if</p>
<p style="text-align: center;">102</p> <p>1 Q. Do you remember what their reasons were for the</p> <p>2 opposition on the public records?</p> <p>3 MR. SWEETEN: You can testify about the</p> <p>4 express reasons on the public record. Don't reveal</p> <p>5 what -- I mean, what -- your interpretation of their</p> <p>6 thoughts, mental impressions. You can testify about</p> <p>7 what was on the public record though. I think that's</p> <p>8 what she was asking.</p> <p>9 A. On the public record I recall statements that</p> <p>10 voter fraud either doesn't exist or is not a problem, a</p> <p>11 general dislike of the legislation.</p> <p>12 Q. Do you remember if MALDEF testified on the</p> <p>13 public record in opposition to the bill?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you remember if there was any talk as part</p> <p>16 of the public record on a compromise bill that year?</p> <p>17 A. I don't specifically remember.</p> <p>18 Q. Do you remember if Todd Smith presented an</p> <p>19 alternative bill on the public record that he offered as</p> <p>20 a compromise voter ID bill?</p> <p>21 A. I don't recall.</p> <p>22 Q. Do you remember if Todd Smith introduced a bill</p> <p>23 that would have delayed implementation of the voter ID</p> <p>24 for four years in order to conduct voter education?</p> <p>25 A. I don't specifically recall.</p>	<p style="text-align: center;">104</p> <p>1 attempts to draft some sort of compromise on the</p> <p>2 legislation that session were successful?</p> <p>3 MR. SWEETEN: Only if it's a matter of</p> <p>4 public record can you answer that.</p> <p>5 A. I don't remember.</p> <p>6 Q. What ultimately happened to SB362 in the House?</p> <p>7 A. I don't think it was heard on the House floor.</p> <p>8 Therefore, it died.</p> <p>9 Q. Did something called chubbing happen to Senate</p> <p>10 Bill 362?</p> <p>11 MR. SWEETEN: You can testify as to</p> <p>12 matters of public record, if you know.</p> <p>13 A. Yes.</p> <p>14 Q. What is that?</p> <p>15 MR. SWEETEN: If you can answer as a</p> <p>16 matter of general understanding.</p> <p>17 MS. BERKOWER: That was the intent of my</p> <p>18 question.</p> <p>19 A. It is a term given to extended debate on</p> <p>20 legislation.</p> <p>21 Q. Is it a technique that some House members might</p> <p>22 use to delay consideration of the bill?</p> <p>23 MR. SWEETEN: Just generally? You can</p> <p>24 answer as a general matter.</p> <p>25 A. Yes.</p>

<p style="text-align: center;">105</p> <p>1 Q. After the end of the is 2009 session -- Well,</p> <p>2 before we get there, how did the 2009 session end as a</p> <p>3 matter of public record?</p> <p>4 A. I guess the speaker gavelled out. I don't know.</p> <p>5 Q. Would you like to gavel out now?</p> <p>6 A. Yes, please.</p> <p>7 Q. Okay. What were the events leading up to his</p> <p>8 gaveling out; do you remember?</p> <p>9 MR. SWEETEN: If it's a matter of public</p> <p>10 record you can testify to, you can.</p> <p>11 A. I -- I don't remember.</p> <p>12 Q. After the -- After he gavelled out at the end of</p> <p>13 the session, were the House rules changed to prevent</p> <p>14 chubbing in the future?</p> <p>15 MR. SWEETEN: You are asking her about --</p> <p>16 her opinion about why the House rules would have been</p> <p>17 changed? You can ask her if a specific bill was</p> <p>18 passed -- If there was a specific House bill passed that</p> <p>19 related to chubbing, I'll allow her to answer if she</p> <p>20 knows.</p> <p>21 Q. Okay. I can restate the question. So after</p> <p>22 the end of the session, and I think this is in line with</p> <p>23 your objection, Patrick, was there a change in House</p> <p>24 rules that prevented chubbing?</p> <p>25 MR. SWEETEN: You can answer.</p>	<p style="text-align: center;">107</p> <p>1 for him, what is your role with regard to the interim</p> <p>2 charge?</p> <p>3 MR. SWEETEN: You can answer if it won't</p> <p>4 reveal matters of legislative privilege.</p> <p>5 A. I sit in the committee hearings when the topic</p> <p>6 is discussed.</p> <p>7 Q. Do you ever play any other role? Do you assist</p> <p>8 them in any way?</p> <p>9 A. Do I assist the committee --</p> <p>10 Q. Yes.</p> <p>11 A. -- with regard to the interim charges?</p> <p>12 Q. Yes.</p> <p>13 A. Yes.</p> <p>14 Q. What do you do?</p> <p>15 MR. SWEETEN: Don't reveal matters of</p> <p>16 privilege. If you won't be doing, so you can answer the</p> <p>17 question.</p> <p>18 A. I'm going to choose not to answer.</p> <p>19 MS. BERKOWER: I guess I'm trying to get</p> <p>20 at more procedural stuff so, I'm not sure that you would</p> <p>21 object to all of them, so I'll try to ask a few more</p> <p>22 specific questions, and if you object to those, we'll</p> <p>23 move on, and if not, she can answer that. Is that</p> <p>24 acceptable, Patrick?</p> <p>25 MR. SWEETEN: That's fine.</p>
<p style="text-align: center;">106</p> <p>1 A. I don't know.</p> <p>2 Q. Okay. So do you -- do you know what an interim</p> <p>3 charge is?</p> <p>4 A. Yes.</p> <p>5 Q. What is it?</p> <p>6 A. It is a suggestion of topics do be studied</p> <p>7 while we're not in session.</p> <p>8 Q. Do you have any role in interim charges issued</p> <p>9 by the speaker and does the speaker issue the interim</p> <p>10 charges for the House?</p> <p>11 A. He does.</p> <p>12 Q. Do you have any role in the interim charges</p> <p>13 issued to committees that you cover for the speaker?</p> <p>14 A. Yes.</p> <p>15 Q. What is that role just as a general matter?</p> <p>16 MR. SWEETEN: What's her role in the</p> <p>17 speaker's office as to interim charges?</p> <p>18 MS. BERKOWER: No. I was asking --</p> <p>19 MR. SWEETEN: As a committee?</p> <p>20 MS. BERKOWER: I can be more specific.</p> <p>21 That might help.</p> <p>22 MR. SWEETEN: Okay.</p> <p>23 Q. If the -- If the House speaker issues a</p> <p>24 committee -- Sorry. If the speaker issues an interim</p> <p>25 charge that goes to one of the committees that you cover</p>	<p style="text-align: center;">108</p> <p>1 Q. Are you involved with -- Do you assist members</p> <p>2 on -- Well, I'll withdraw that.</p> <p>3 Does the committee hold hearings during</p> <p>4 the interim session if they have an interim charge?</p> <p>5 MR. SWEETEN: You can answer.</p> <p>6 A. If the chair chooses to, yes.</p> <p>7 Q. Do you help them organize those hearings?</p> <p>8 A. No.</p> <p>9 Q. Do you ever reach out to potential witnesses to</p> <p>10 testify?</p> <p>11 A. No.</p> <p>12 Q. Do you ever do research to be presented during</p> <p>13 those hearings?</p> <p>14 MR. SWEETEN: Don't reveal matters of</p> <p>15 privilege as to specific legislation. I think you can</p> <p>16 answer that as a general matter.</p> <p>17 A. No.</p> <p>18 MR. SWEETEN: Okay.</p> <p>19 Q. Do you participate in writing any report or</p> <p>20 recommendation that comes out of the interim charge?</p> <p>21 A. No.</p> <p>22 Q. Is your role more to observe?</p> <p>23 A. Yes.</p> <p>24 Q. And to bring a report back on what you see?</p> <p>25 A. Yes.</p>

109

1 Q. Do you remember if any interim charges were
2 issued during the -- after the 2009 session that related
3 to the elections committee?

4 MR. SWEETEN: I think that's a matter of
5 public record. You can go ahead, if you know.

6 A. Yes.

7 Q. It is a matter of public record. Do you know
8 if the elections committee held hearings as a result?

9 A. They did.

10 Q. Did they come up with a report at the end of
11 their investigation?

12 A. If I recall correctly, they did.

13 (Exhibit 643 marked.)

14 Q. Okay. We have what we'll mark as Exhibit 643,
15 please. And I'll represent to you that this is an
16 excerpt of the full report which was pretty long. Do
17 you recognize this?

18 A. Yes.

19 Q. What is it?

20 A. It is the interim report to the 82nd Texas
21 Legislature from the House Committee on Elections.

22 Q. When was it presented?

23 A. It says January 2009 on the document.

24 Q. And turning to the fourth page of the exhibit,
25 which is -- actually it says Page 26 on it, but I think

110

1 it's the fourth page of this exhibit. It says, "Interim
2 Charge No. 3." Do you see that?

3 A. Yes.

4 Q. What -- What does Interim Charge No. 3 provide?

5 A. "Examine the prevalence of fraud in Texas
6 elections. Study new laws in other states regarding
7 voter identification and recommended statutory changes
8 necessary to ensure that only eligible voters can vote
9 in Texas elections."

10 Q. Do you remember the issuance of that interim
11 charge?

12 A. Yes.

13 Q. And do you remember attending hearings related
14 to that interim charge?

15 A. Yes.

16 Q. Do you remember receiving this report when it
17 was presented to the legislature at the end of -- or at
18 the start of the 2009 legislative session?

19 A. Yes.

20 Q. Turning to Page 27 under testimony -- And did
21 you want -- do you want to take a minute and review the
22 document? I don't know if you had a chance to do that
23 yet.

24 A. Sure.

25 Q. Let me know when you are done.

111

1 A. Okay. Okay.

2 Q. You ready?

3 A. Yeah, I think so.

4 Q. So turning to Page 27, does that page describe
5 testimony that was presented to the committee?

6 A. Yes.

7 Q. Does it describe testimony presented by Jay
8 Dyer from the Attorney General's Office?

9 A. Yes.

10 Q. And does Mr. Dyer explain that there were --
11 does he give some information on the number of referrals
12 and the incidences of alleged illegal voting and the
13 resolution of those cases?

14 A. Yes.

15 Q. And he says that the -- Well, how many
16 incidents did he describe?

17 MR. SWEETEN: You are asking what the
18 document states?

19 MS. BERKOWER: As recorded in the
20 document, yes.

21 MR. SWEETEN: Okay.

22 A. The document says 267 referrals.

23 Q. Since what date?

24 A. Since 2002.

25 Q. And I think I should direct your attention to

112

1 the paragraph on background. It indicates the hearing
2 was held on June 14th, 2010. Is that accurate?

3 A. Yes.

4 Q. So Mr. Dyer's testimony seems to being limited
5 to the periods between 2009 and June 14, 2010. Is that
6 an accurate reflection of this report?

7 MR. SWEETEN: You can testify about what
8 the document says. Don't testify about your thoughts,
9 your mental impressions about the bill.

10 A. The document says since 2002, 267 referrals
11 were received by the Attorney General's Office and the
12 hearing was on June 14, 2010.

13 Q. Were you present when Mr. Dyer testified?

14 A. I don't recall.

15 Q. So the paragraph that mentions the 267
16 referrals of incidents of illegal voting, it goes on to
17 describe the resolution of those cases. You reviewed
18 that part of the paragraph?

19 A. Yes. The document says, "35 of those alleged
20 violations have been resolved with guilty pleas,
21 dismissals or plea agreements, while 12 cases remain
22 active and the remainder of the cases are either still
23 being investigated or the statute of limitations has
24 expired."

25 Q. Was there any testimony about the total number

113

1 of people voted between 2002 and June 14, 2010?

2 A. In this hearing?

3 Q. Yes, in this hearing.

4 A. I don't remember.

5 Q. In the testimony section of this report, do you

6 see anything that indicates the number of voters who

7 voted during that period?

8 A. I'm not seeing it on this page, unless I'm

9 missing it.

10 Q. So that this report relates -- the testimony --

11 the answer would be no?

12 A. As far as what is on this document, I'm not

13 seeing it.

14 Q. Okay. And then Mr. Dyer testified further and

15 it's described in the next two paragraphs. The

16 paragraph after the one you were just reading, can you

17 read the last sentence of that paragraph, please?

18 A. "To get a complete picture of voter fraud in

19 Texas, further analysis is needed to gather additional

20 information from local election and law enforcement

21 officials."

22 Q. So without -- Do you know if any such analysis

23 was ever conducted without revealing any particular

24 request by a legislator or any communication back to a

25 particular legislator?

114

1 A. I don't know.

2 Q. And do you know if the report made a

3 recommendation to the legislature? I think it's on Page

4 31.

5 A. According to the document they did.

6 Q. Would that be in the section entitled

7 Recommendations?

8 A. Yes.

9 Q. What did they recommend based on this report?

10 A. "Based on the report, the elections committee

11 recommends that the legislature adopt legislation

12 requiring voters to show photo identification in order

13 to cast a ballot at the polls. We ask that free

14 identification cards be issued by either the Department

15 of Public Safety, the local voter registrar's office if

16 the voter is registered in this state, does not already

17 have a driver's license and is receiving the

18 identification cards with the express intent to vote.

19 It is also important that such legislation provide for

20 the education of voters on any changes enacted and that

21 the Secretary of State and counties coordinate their

22 efforts to inform the state's electorate. This law

23 should take effect January 1, 2012."

24 Q. At a general matter of your experience in the

25 legislature, when an interim charge -- when a committee

115

1 comes back after an interim charge with a

2 recommendation, what do legislators do with that? How

3 is that received?

4 MR. SWEETEN: Calls for matters of

5 legislative privilege and compound.

6 Q. Well, do they have public hearings or any

7 public discussion on the record of the House about the

8 interim charge reports?

9 A. Sometimes.

10 Q. Do you know if there was such discussion on the

11 public record about this interim charge report?

12 A. I don't recall if it was specifically

13 discussed.

14 Q. Do you know if members who participate in

15 interim charge investigations ever draft legislation

16 simultaneously to their participation in the interim

17 charge investigation?

18 MR. SWEETEN: I wish -- Sorry. Can you

19 say that again, Risa?

20 MS. BERKOWER: Yeah. It was a question of

21 if she knows whether members who serve on interim charge

22 committees ever draft legislation simultaneously to

23 their work on the interim charge committee.

24 MR. SWEETEN: You are not asking about a

25 specific bill? You are just asking generally do they

116

1 sometimes do that?

2 MS. BERKOWER: Yes.

3 MR. SWEETEN: Okay. You can answer that

4 question as posed to the extent it doesn't reveal the

5 legislative privilege.

6 A. I don't know.

7 MS. BERKOWER: Guys, want to take a lunch

8 break?

9 MR. SWEETEN: Sure. That sounds good.

10 (Recess from 12:45 p.m. to 1:31 p.m.)

11 Q. (BY MS. BERKOWER) Okay. So I think when we

12 left off at the end of lunch, we were just talking about

13 the state interim report that the elections committee

14 presented to the House in January 2011. So we'll

15 continue with that period of time. During the 2011

16 legislative session was a special committee created only

17 to address election related or voter ID related

18 legislation?

19 MR. SWEETEN: Objection. Because you are

20 asking the purpose of its creation. She's already

21 testified that it was a committee. I think she's

22 testified to the matters that you are asking, except to

23 the extent you are asking for the mental process, that

24 portion.

25 Q. Then I'll actually withdraw that question. Was

<p style="text-align: center;">117</p> <p>1 a photo ID bill addressed in the Senate in 2011?</p> <p>2 A. Yes.</p> <p>3 (Exhibit 644 marked.)</p> <p>4 Q. This is exhibit -- We'll just give you a new</p> <p>5 644, please. Do you know what this?</p> <p>6 A. This is a copy of Senate Bill 14.</p> <p>7 Q. And if I represent to you this is Senate Bill</p> <p>8 14 as filed in the Senate, do you have any reason to --</p> <p>9 sorry -- as filed in the House, do you have any reason</p> <p>10 to think that's not actually the case?</p> <p>11 A. No.</p> <p>12 Q. Take a minute to look at the document. You've</p> <p>13 reviewed it?</p> <p>14 A. Yes.</p> <p>15 Q. So do you recognize it?</p> <p>16 A. Yes.</p> <p>17 Q. Are you familiar with its provisions?</p> <p>18 A. Yes.</p> <p>19 Q. Turning your attention to -- it's page --</p> <p>20 page -- well, really it's 4 and 5 of the document is</p> <p>21 what we're going to be looking at. Part G on Page 4 at</p> <p>22 Line 14. Sorry. And then Part H on Page 5 at Line 4.</p> <p>23 Sorry about that. Do you see what that section -- what</p> <p>24 that section says?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">119</p> <p>1 issued by the Department of Public Safety as long as</p> <p>2 those forms of identification have not expired?</p> <p>3 MR. SWEETEN: You can answer about the</p> <p>4 text of the bill, the question.</p> <p>5 A. On the text of the bill, yes.</p> <p>6 Q. And it permits a voter -- the text of this bill</p> <p>7 permits a voter to present a United States military</p> <p>8 identification card that contains the person's</p> <p>9 photograph and has not expired; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And it also permits a person -- a voter to</p> <p>12 present a US citizenship certificate that contains a</p> <p>13 photograph; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And it permits a US passport issued to the</p> <p>16 person that has not expired; is that accurate?</p> <p>17 A. Yes.</p> <p>18 Q. If you remember our discussion on SB362, were</p> <p>19 there additional types of identification that SB362</p> <p>20 permitted that this bill does not permit?</p> <p>21 MR. SWEETEN: You can answer based on the</p> <p>22 text of the bill.</p> <p>23 Q. And you can refer back to that exhibit if you</p> <p>24 need to.</p> <p>25 A. Yes, yes.</p>
<p style="text-align: center;">118</p> <p>1 Q. Does that section appear to carve out an</p> <p>2 exception for voters presenting photo identification?</p> <p>3 A. It says -- document says, "The requirements for</p> <p>4 identification prescribed by Subsection B do not apply</p> <p>5 to a voter who, one, presents the voter's voter</p> <p>6 registration certificate on offering to vote and, two,</p> <p>7 was 70 years of age or older on January 1, 2012 as</p> <p>8 indicated by the date of birth on the voter's voter</p> <p>9 registration certificate."</p> <p>10 Q. Does that section seem to create an exemption</p> <p>11 for voters over age 70 to the identification</p> <p>12 requirements?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know if that section was taken out of</p> <p>15 the final bill?</p> <p>16 A. I don't recall.</p> <p>17 Q. Turning your attention to Page 8 of the</p> <p>18 document, Section 63.0101, "Documentation of Proof</p> <p>19 Identification." Are you familiar with this section?</p> <p>20 A. Yes.</p> <p>21 Q. Does this section explain which types of photo</p> <p>22 ID a voter may present to vote at the polls?</p> <p>23 A. Yes.</p> <p>24 Q. And does it permit a voter to present a</p> <p>25 driver's license or a personal identification card</p>	<p style="text-align: center;">120</p> <p>1 Q. Did SB362, the text of the bill as you are</p> <p>2 looking at it also permit a voter to use an ID that had</p> <p>3 expired? Actually, I should make that more specific.</p> <p>4 Did it permit a voter to use a driver's</p> <p>5 license or personal identification card that had expired</p> <p>6 for no more than two years?</p> <p>7 A. Yes.</p> <p>8 Q. Whereas, SB14 has filed -- required an</p> <p>9 unexpired version of those identifications; is that</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And the same goes for the military</p> <p>13 identification. SB362 allowed -- wait a second --</p> <p>14 allowed identification that had expired, whereas, SB14</p> <p>15 as filed did not.</p> <p>16 MR. SWEETEN: Again, you can answer based</p> <p>17 on the text of this.</p> <p>18 A. Yes.</p> <p>19 Q. The same question with regards to passports.</p> <p>20 Did SB362 as it is before you permit an expired passport</p> <p>21 within two years, whereas, SB14 does not? Actually, I'm</p> <p>22 going to withdraw that question.</p> <p>23 A. Okay.</p> <p>24 Q. So is it fair to say there are also types of</p> <p>25 identifications allowed under SB362 as it's before you</p>

121

1 that are not included in SB14, the version that's before
2 you?

3 A. In the version before me, yes, I believe that
4 would be a fair statement.

5 Q. Do you know if there's any evidence in the
6 public record for SB14 that supported the conclusion
7 that only unexpired ID will prevent voter fraud?

8 MR. SWEETEN: Objection. Calls for
9 matters of the legislative privilege. If you want to
10 ask it another way, more topically general, I won't
11 object to that question.

12 Q. Did you hear anyone testify on the public
13 record that only unexpired IDs will prevent voter fraud?

14 MR. SWEETEN: You can answer.

15 A. I don't recall.

16 Q. Did anyone present any studies on the public
17 record that showed that only unexpired IDs will prevent
18 voter fraud?

19 MR. SWEETEN: You can answer.

20 A. I don't recall that type of testimony.

21 Q. Do you remember any testimony in the public
22 record that explained why the types of identification
23 permitted in SB362 that are not included in SB14 should
24 not be included in SB14?

25 MR. SWEETEN: I think you can answer the

122

1 question based on the public record.

2 A. Yes.

3 Q. What testimony was that?

4 A. Basically that certain IDs allowed under 362
5 did not require a photo.

6 Q. Do you remember who testified to that?

7 A. I don't remember specifically who did.

8 Q. Do you remember which hearing it was in?

9 A. I don't recall if it was House or Senate.

10 Q. Did the person who testified to that provide
11 any reasons why a photo ID is necessary to prevent voter
12 fraud?

13 MR. SWEETEN: You can answer -- To the
14 extent that reasons were expressed on the record, you
15 can answer the question.

16 A. Yes. Reasons were expressed on the record.

17 Q. What were those reasons?

18 A. On the record I remember testimony that you
19 need to compare a photo to the person's face standing in
20 front of you who's voting.

21 Q. And SB14 as filed in the House only permitted
22 unexpired IDs, correct, based on the version you have in
23 front of you?

24 A. Yes. On the version in front of me, yes.

25 Q. How often do you have to renew a Texas driver's

123

1 license?

2 A. If I recall correctly, I could be wrong, I
3 think it's every six years. I could be wrong.

4 Q. Is it possible to review your license online?

5 A. I don't recall. I don't know.

6 Q. Do you know if you have to take a new photo
7 every time you renew the license?

8 A. I don't know.

9 Q. Well, and to your knowledge someone would go a
10 least six years without having to retake the photo,
11 right?

12 A. To my knowledge, yes.

13 Q. Is it possible -- is it possible that someone
14 would look different in a photo taken six years earlier?

15 A. It's possible.

16 Q. Do you know if the United States citizenship --
17 a United States citizenship certificate that contains a
18 photo would ever expire?

19 A. I don't know.

20 Q. If it didn't expire and it was issued to
21 someone when they were a child, would they still -- is
22 there a chance they would no longer look like that photograph
23 decades later?

24 MR. SWEETEN: Objection. It is compound,
25 calls for speculation. Please go ahead.

124

1 A. There is a chance.

2 Q. Do you know how long a United States passport
3 is valid?

4 A. Off the top of my head, I don't.

5 Q. Now, with regard to driver's licenses, this is
6 something I should have asked you before, do you know if
7 there's a driver's license office for legislators in the
8 capitol next to the mail room?

9 A. I don't know. I don't know. I don't know if
10 it's still there.

11 Q. Did it exist at one time?

12 A. I think it did, but I don't know exactly what
13 type of services they offered.

14 Q. Did you ever go there yourself?

15 A. Not that I recall.

16 Q. Do you know if it's included in the list of
17 driver's license offices on the Department of Public
18 Safety's website?

19 A. I don't know.

20 Q. Did you have any communications with Senator
21 Fraser or members of his office as he developed SB14
22 without revealing the contents of any communications you
23 may have had?

24 MR. SWEETEN: I think it assumes facts in
25 evidence because I don't know that she has testified as

<p style="text-align: center;">125</p> <p>1 to when he developed it, so I think --</p> <p>2 MS. BERKOWER: I'll back up a little.</p> <p>3 MR. SWEETEN: I don't mind asking her</p> <p>4 conversations.</p> <p>5 Q. (BY MS. BERKOWER) So do you know when Senator</p> <p>6 Fraser developed SB14?</p> <p>7 A. I do not.</p> <p>8 Q. Did you have any communications with him or his</p> <p>9 office between the 2009 and 2011 legislative sessions?</p> <p>10 A. Not that I can recall.</p> <p>11 Q. Do you know if Speaker Straus had any</p> <p>12 communications without revealing their content between</p> <p>13 Speaker Straus and Senator Fraser or his office between</p> <p>14 the 2009 and 2011 legislative sessions?</p> <p>15 A. I don't know.</p> <p>16 Q. Did you have any communications with the</p> <p>17 lieutenant governor's office between the 2009 and 2011</p> <p>18 legislative sessions?</p> <p>19 A. Yes.</p> <p>20 Q. Without revealing the content of what you</p> <p>21 discussed, who did you communicate with?</p> <p>22 A. Brian Hebert.</p> <p>23 Q. What was the general topic of those</p> <p>24 communications?</p> <p>25 A. A lot of them were where to go eat for lunch,</p>	<p style="text-align: center;">127</p> <p>1 of the 2011 legislative session?</p> <p>2 MR. SWEETEN: You can answer.</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know if Speaker Straus had any</p> <p>5 communications with the lieutenant governor's office</p> <p>6 about SB14 after the legislative session began without</p> <p>7 revealing the content?</p> <p>8 A. I don't know.</p> <p>9 Q. If a photo ID is expired but was validly</p> <p>10 issued, why doesn't that prove the person is the same</p> <p>11 person on the ID?</p> <p>12 MR. SWEETEN: Don't answer. It calls for</p> <p>13 matters of legislative privilege. Instruct not to</p> <p>14 answer.</p> <p>15 Q. Are you following that instruction?</p> <p>16 A. Yes.</p> <p>17 MR. SWEETEN: You are trying to see if I'm</p> <p>18 wake, aren't you?</p> <p>19 MS. BERKOWER: That's our the strategy.</p> <p>20 We give you like these beef fajitas and I slip them in.</p> <p>21 Q. (BY MS. BERKOWER) Do you know what a military</p> <p>22 ID is?</p> <p>23 MR. SWEETEN: You can answer.</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p>
<p style="text-align: center;">126</p> <p>1 where to go to happy hour. Probably more unwork related</p> <p>2 than work related.</p> <p>3 Q. What were the work related ones about</p> <p>4 without -- as a general matter?</p> <p>5 MR. SWEETEN: If you can give a general</p> <p>6 description, but don't go into the communication.</p> <p>7 A. Generally they were about legislation.</p> <p>8 Q. Were any of them about voter ID legislation?</p> <p>9 A. Yes.</p> <p>10 Q. Were any of them about SB14?</p> <p>11 A. Yes.</p> <p>12 Q. Do you remember when specifically the</p> <p>13 communications with Brian Hebert were about SB14</p> <p>14 occurred?</p> <p>15 A. On -- Throughout the session.</p> <p>16 Q. What about before the session?</p> <p>17 A. I don't recall any conversations before</p> <p>18 session.</p> <p>19 Q. And after the session started, did you have</p> <p>20 communications with Senator Fraser or anyone from his</p> <p>21 office?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Do you know if Speaker Straus without revealing</p> <p>24 any content had any communications with the lieutenant</p> <p>25 governor's office between -- about SB14 before the start</p>	<p style="text-align: center;">128</p> <p>1 A. An ID issued by the military.</p> <p>2 Q. How different forms of military ID are there?</p> <p>3 A. That I don't know.</p> <p>4 Q. Do you know so -- Did you have any</p> <p>5 communications during the time that you worked on SB14</p> <p>6 with anyone about which forms of military ID would be</p> <p>7 acceptable under SB14?</p> <p>8 MR. SWEETEN: I think that would require</p> <p>9 her to reveal her process and analysis and mental</p> <p>10 impressions regarding the bill.</p> <p>11 Q. I can be more specific and, actually, that</p> <p>12 might help here. Did you have any communications with</p> <p>13 non-legislators or anyone outside the legislature about</p> <p>14 which forms of military ID SB14 would be unacceptable</p> <p>15 under SB14?</p> <p>16 A. I don't recall any conversations like that.</p> <p>17 Q. Do you know what a citizenship certificate is?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. Essentially a piece of paper stating that the</p> <p>21 individual is a citizen of the United States.</p> <p>22 Q. Have you seen one?</p> <p>23 A. I have not.</p> <p>24 Q. Do you know how much it cost to obtain one?</p> <p>25 A. I do not.</p>

129

1 Q. Do you know how much it would cost to get a
2 replacements citizenship certificate?
3 A. I don't.
4 Q. Do you know what you would have to do to get a
5 replacement?
6 A. I don't.
7 Q. Do you know how long it might take to get a
8 replacement?
9 A. I do.
10 Q. Do you know if citizenship certificates always
11 contain a photo?
12 A. I don't know.
13 Q. Do you know how much it cost to obtain a US
14 passport?
15 A. Off the top of my head, I don't.
16 Q. Do you know what documents you would need to
17 provided to get a passport?
18 A. I believe when I got mine, I had to provide a
19 birth certificate and Social Security card, I think.
20 Q. Have you ever -- Are you familiar with the
21 photo ID laws in Indiana and Georgia?
22 MR. SWEETEN: I'm sorry. Is she familiar
23 with --
24 Q. Is she familiar with those laws?
25 MR. SWEETEN: You can answer except to the

130

1 extent it would reveal your mental processes regarding
2 legislation.
3 Q. It's just a yes or no question.
4 A. Yes.
5 Q. Okay. This has been previously marked as
6 Exhibit 6. Do you know what this is?
7 A. This looks like it is the Georgia statutes.
8 Q. The Georgia photo ID statute?
9 A. Yes.
10 Q. Does this -- Turning your attention to the
11 first page of this exhibit, Part A1, does this provision
12 allow a voter to present a Georgia driver's license
13 properly issued by the appropriate state's agency?
14 A. Yes.
15 Q. Does the law specify that the ID must be
16 unexpired?
17 A. This -- On this document, no.
18 Q. Does this -- Does Part 2 there, the next
19 section, allow a voter to present a valid Georgia voter
20 identification card issued under Code Section 21-2-417.1
21 or other valid identification card issued by a branch,
22 department, agency or entity of the State of Georgia,
23 any other state or the United States authorized by law
24 to issue personal identification so long as it's a photo
25 identification?

131

1 A. Yes.
2 Q. Based on the version of SB14 that you have in
3 front of you, does SB14 -- does that -- does the text of
4 that bill permit all of those types of identification?
5 A. Permit all of the types?
6 Q. Of identification in that Part A2 that we just
7 reviewed in the Georgia law.
8 A. Does SB14 allow all of these? According to the
9 version of Senate Bill 14 in front of me, no.
10 Q. Does this version of Senate Bill 14 allow
11 identification -- a voter to present photo
12 identification issued by a branch, department, agency or
13 entity of the State of Texas other than those issued by
14 DPS as specified?
15 A. Can you repeat the question?
16 Q. Yes. Does SB14 allow a voter to present photo
17 ID issued by any Texas agency other than the Department
18 of Public Safety?
19 A. No, according to this version.
20 Q. Does SB14 permit a voter to present
21 identification issued by any other state?
22 A. In this version of SB14, no.
23 Q. Does SB14 allow a voter to present as
24 identification a photo ID issued by a branch,
25 department, agency or entity of the United States except

132

1 for US military ID, US citizenship certificates and US
2 passports?
3 A. No.
4 Q. Turning back to the Georgia law, No. 4, listed
5 under where we were looking before, does the Georgia law
6 allow a voter to present photographic identification
7 issued by employers of the State of Georgia or the US
8 government?
9 A. Yes.
10 Q. Does the text of SB14 that you have before you
11 allow that type of identification?
12 A. Can you repeat the question?
13 Q. Yes. The Georgia law, Part 4 there, allows a
14 voter to present identification employee IDs issued by
15 the US government or the State of Georgia. Does SB14
16 permit a voter to present identification that's an
17 employee identification issued by anybody?
18 A. In this version of Senate Bill 14, no.
19 Q. Under Part 6 in the Georgia law, that section
20 permits a voter to present a valid tribal identification
21 card containing a photograph; is that correct?
22 A. Yes.
23 Q. Is there a provision for tribal identification
24 in SB14?
25 A. In the document in front of me, no.

133

1 Q. Is it fair to say that the Georgia law allows
2 more forms of identification than SB14?
3 MR. SWEETEN: Based on the text of the
4 bill --
5 MS. BERKOWER: Yes.
6 MR. SWEETEN: -- that she's got in front
7 of her? You can answer that.
8 A. Based on the text in front of me, yes.
9 Q. During the public debate of SB14, did anyone
10 that you heard testify raise concerns that SB14 should
11 have adhered more closely to the Georgia law?
12 MR. SWEETEN: You can answer. It's a
13 public record.
14 A. On my own public record, I know that Georgia
15 law was discussed. I don't know if anyone specifically
16 suggested that Senate Bill 14 should being closer to the
17 Georgia law.
18 Q. Do you know of any concerns raised by
19 constituents who contacted your office that SB14 should
20 have adhered more closely to the Georgia law?
21 A. I don't recall.
22 Q. Do you know if Speaker Straus ever made any
23 public statements that -- to the effect that SB14 was
24 similar to the Georgia law?
25 A. I don't know.

134

1 Q. So I have what was previously marked as
2 Exhibit 60. Do you know what this is?
3 A. This looks like it is a copy of the Indiana
4 statutes.
5 Q. Did you -- Have you read it before?
6 A. I have not.
7 Q. Take a minute to look at it now. Are you
8 ready?
9 A. Yes.
10 Q. So looking at Section 1.1C3-5-2-40.5 on the
11 first page of the document -- Did I ask you what this is
12 already?
13 A. Yes.
14 Q. Okay. And you said it was the Indiana voter ID
15 law?
16 A. I think I said it was the Indiana statute, but
17 it's the Indiana voter ID law.
18 Q. Okay. That Section 40.5, Proof of
19 Identification, does that section seem to define the
20 type of identification acceptable for voters to provide
21 at the polls under this law?
22 A. From the text in front of me, yes.
23 Q. And does Section 40.5 list four requirements
24 for that identification?
25 A. Yes.

135

1 Q. Are those requirements that the document must
2 contain the name of the individual, photograph of the
3 individual and an expiration date, and the document must
4 have been issued by the United States or the State of
5 Indiana?
6 A. Yes.
7 Q. And the expiration date must reveal that the
8 document is either not expired or has not expired -- or
9 expired after the dates of the most recent general
10 election is before the one on which it is presented.
11 A. From the document in front of me, yes.
12 Q. So does that mean from -- The face of this does
13 it seem that a voter in Indiana could present an expired
14 ID so long as it hasn't expired before the date of the
15 most recent general election?
16 A. From the text in front of me, yes.
17 Q. And this -- since this document -- I'll
18 rephrase that. Is it fair to say that based on the text
19 in front of you, this -- the Indiana law allows voters
20 to present a wider range of identification than SB14
21 permits based on the text of both bills in front of you?
22 A. From the text in front of me, yes.
23 Q. During the time that SB14 was considered by the
24 Texas legislature, are you aware of any discussion on
25 the public record about the differences between SB14 and

136

1 the Indiana law?
2 A. I know the Indiana law was discussed. I don't
3 remember the specifics.
4 Q. Do you remember if anyone expressed concern on
5 the public record that SB14 should adhere more closely
6 to the Indiana law?
7 A. Again, I just know it was discussed. I
8 don't -- I don't remember specifics.
9 Q. What does the term legislative emergency mean
10 within the Texas legislature?
11 MR. SWEETEN: You can answer as a general
12 matter what that term means to you to the extent it
13 won't reveal legislative privilege.
14 A. I don't know. I've never really thought about
15 it, legislative emergency. I think it can be used to
16 characterize seemingly important legislation.
17 Q. When a type of legislation is deemed a
18 legislative emergency, does that mean that the bill --
19 that the legislation on that topic can be considered
20 earlier in the session?
21 MR. SWEETEN: You can answer as a general
22 matter if you know.
23 A. As a general matter, it could mean that.
24 Q. Do you know just as a matter of procedure if
25 there are any constraints on what types of legislation

<p style="text-align: center;">137</p> <p>1 the governor may declare to be a legislative emergency?</p> <p>2 A. That I don't know.</p> <p>3 Q. Do you know who decides -- I'll rephrase that.</p> <p>4 So do you know if Speaker Straus had any</p> <p>5 communications with the governor about legislative</p> <p>6 emergency prior to the 2011 legislative session?</p> <p>7 MR. SWEETEN: Can you read the question</p> <p>8 back?</p> <p>9 (Requested portion was read.)</p> <p>10 MR. SWEETEN: You can answer. That's a</p> <p>11 general enough subject matter. You can answer the</p> <p>12 question.</p> <p>13 A. I don't know.</p> <p>14 Q. Was photographic voter ID declared to be a</p> <p>15 legislative emergency for the 82nd legislature?</p> <p>16 A. To my recollection, yes.</p> <p>17 Q. And when did you first learn about the</p> <p>18 designation?</p> <p>19 A. I don't remember the date.</p> <p>20 Q. Around when?</p> <p>21 A. Around the start of the session, I think.</p> <p>22 Q. In your time working in the legislature have</p> <p>23 you seen any other election law designated as a</p> <p>24 legislative emergency?</p> <p>25 A. No.</p>	<p style="text-align: center;">139</p> <p>1 A. I don't know.</p> <p>2 Q. Did you follow SB14 in the Senate?</p> <p>3 A. Yes.</p> <p>4 Q. Was SB14 referred to the committee of the whole</p> <p>5 Senate?</p> <p>6 A. Yes.</p> <p>7 Q. How many other bills were referred to the</p> <p>8 committee of the whole Senate during the 2011</p> <p>9 legislative session?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know if any others were?</p> <p>12 MR. SWEETEN: Objection. Asked and</p> <p>13 answered, but go ahead.</p> <p>14 A. I don't recall any others.</p> <p>15 Q. Do you know how the committee referral process</p> <p>16 works in the Senate?</p> <p>17 A. I don't.</p> <p>18 Q. Did you attend any Senate hearings concerning</p> <p>19 SB14?</p> <p>20 A. Yes.</p> <p>21 Q. Do you remember attending a Senate hearing on</p> <p>22 January 25, 2012?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall having any conversation with</p> <p>25 Senator Williams at that hearing?</p>
<p style="text-align: center;">138</p> <p>1 Q. During your time working in the legislature,</p> <p>2 what other types of legislation were designated to be a</p> <p>3 legislative emergency?</p> <p>4 A. I forget the name of the bill, but it was</p> <p>5 the -- how do I say this is tactfully? I guess the</p> <p>6 transvaginal thing with abortions. I'm sorry. I can't</p> <p>7 remember the name of the bill because it's been termed</p> <p>8 so many inappropriate things. You have to --</p> <p>9 MR. SWEETEN: That's descriptive enough.</p> <p>10 I will stop there.</p> <p>11 THE WITNESS: Sorry.</p> <p>12 Q. Are you following his advice?</p> <p>13 A. There's that one. What else? Oh, if I'm</p> <p>14 recalling correctly, I think maybe Sanctuary Cities was</p> <p>15 an emergency item last session. Those are the three</p> <p>16 that come to mind. The wand or whatever.</p> <p>17 Q. Do you know if there were any elections held in</p> <p>18 Texas within the first 60 days of the 2011 legislative</p> <p>19 session?</p> <p>20 A. I do not know of any.</p> <p>21 Q. Do you know who had input into the decision to</p> <p>22 designate voter identification as a legislative</p> <p>23 emergency?</p> <p>24 MR. SWEETEN: Don't reveal matters of</p> <p>25 privilege in answering the question.</p>	<p style="text-align: center;">140</p> <p>1 A. Yes.</p> <p>2 Q. Do you know if there was any discussion on the</p> <p>3 public record during that hearing about matching the</p> <p>4 driver's license and voter registration databases?</p> <p>5 A. Yes.</p> <p>6 Q. What was that evidence?</p> <p>7 MR. SWEETEN: You can just talk about</p> <p>8 matters of the public record.</p> <p>9 A. I don't recall specifics. I know that the</p> <p>10 topic was discussed.</p> <p>11 Q. Do you remember in what context it was</p> <p>12 discussed?</p> <p>13 A. Can you elaborate?</p> <p>14 Q. Well, do you remember who was testifying about</p> <p>15 it?</p> <p>16 A. I don't.</p> <p>17 Q. Do you remember if it was someone from the</p> <p>18 Secretary of State's office?</p> <p>19 A. That sounds right.</p> <p>20 Q. Do you remember if it was a person named Ann</p> <p>21 McGeehan?</p> <p>22 A. I know she testified.</p> <p>23 Q. During that hearing?</p> <p>24 A. Yes.</p> <p>25 Q. And I'm not sure if I got this yet. Do you</p>

141

1 remember why the question of matching the driver's
 2 license and voter registration databases came up or in
 3 what context?
 4 MR. SWEETEN: In what context -- If the
 5 context would be on the public record, you can answer
 6 that.
 7 MS. BERKOWER: Yes.
 8 A. I believe it came up because the question was
 9 asked -- I'm not sure by who -- if they could match
 10 registered voters with the driver's license database.
 11 Q. Did the person who testified explain why
 12 someone would want to conduct that match, like what the
 13 purpose of conducting that match would be?
 14 A. They did.
 15 Q. What was the reason?
 16 MR. SWEETEN: Expressed on the public
 17 record, you can testify to if you know.
 18 A. I recall whoever -- I guess, Ann, whoever was
 19 testifying, stating that the purpose would be to see how
 20 many registered voters have a driver's license.
 21 Q. What -- Did she explain what that would show on
 22 the public record?
 23 A. I'm sure she did.
 24 Q. Was it to show or get an estimate of the number
 25 of voters who might be impacted by SB14's requirements?

142

1 MR. SWEETEN: If you are asking on matters
 2 of public record, you can testify as to that.
 3 A. Can you repeat it? I'm sorry.
 4 Q. Yeah. Did she explain on the public record
 5 that the purpose of conducting that match would be to
 6 show how many voters may not have the identification
 7 required by SB14?
 8 A. Yes.
 9 Q. Do you know if that match was in fact
 10 conducted?
 11 A. I don't know.
 12 Q. Okay. Did you ever hear anyone else talk on
 13 the public record about the results of such a match?
 14 A. I don't recall hearing anyone talk about the
 15 results.
 16 Q. When the bill was back in the House, did you
 17 hear anybody say as part of the public record that they
 18 would -- that they were interested in the results of
 19 such a match?
 20 A. I'm -- I'm -- I don't recall specifically. It
 21 probably was said, but I can't recall specifically.
 22 Q. Maybe I can be a little more specific which
 23 would help.
 24 During the House debates do you remember
 25 anyone expressing on the public record concerns about

143

1 the number of voters who may not have requisite
 2 identification under SB14?
 3 A. Yes, I remember that coming up.
 4 Q. In that context, do you remember any discussion
 5 on the public record about a match that the Secretary of
 6 State's office could conduct between the voter
 7 registration database and the driver's license
 8 databases?
 9 MR. SWEETEN: Just as to the public
 10 record?
 11 A. I recall that testimony.
 12 Q. Do you know if the Secretary of State's office
 13 ever provided the results of that match to members of
 14 the House without specifying who asked for them or who
 15 received them?
 16 MR. SWEETEN: I think she's answered that
 17 twice now about analysis. I think I'm going to let her
 18 answer a third time, but I don't want to keep beating
 19 this drum, but go ahead, you can answer the question.
 20 A. I don't know.
 21 Q. Okay. Who were the sponsors of SB14 in the
 22 House?
 23 A. In the house it was Patricia Harless.
 24 Q. How is it decided just as a general procedural
 25 matter who sponsors a bill in the House that comes over

144

1 from the Senate?
 2 A. As a general matter, my understanding is a
 3 senator has the discretion to ask any House member to
 4 carry their piece of legislation.
 5 Q. Does Speaker Straus ever play a role in who
 6 ends up sponsoring a bill?
 7 MR. SWEETEN: Objection. Legislative
 8 privilege. Unless it's a matter of public record --
 9 Unless it's a matter of public record, then don't answer
 10 his process and his role unless that's in the public
 11 record.
 12 A. I'm choosing not to answer.
 13 Q. Okay. I guess maybe I should have been more
 14 clear too. I'm not as familiar with the House rules as
 15 you are, so are there any House rules that provide for
 16 the speaker's involvement in the designation of sponsors
 17 and bills that come from the Senate?
 18 A. Not that I'm aware of.
 19 Q. Okay. What committee was the bill sent when it
 20 arrived in the House?
 21 A. If I recall correctly, it was sent to the
 22 select committee on voter ID and voter fraud.
 23 Q. Right. Did you following the special committee
 24 hearings or select committee hearings?
 25 A. Yes.

<p style="text-align: center;">145</p> <p>1 Q. Did the select committee hold any hearings?</p> <p>2 A. Yes.</p> <p>3 Q. Did witnesses provide testimony at those</p> <p>4 hearings?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember who provided testimony?</p> <p>7 A. I remember some of the witnesses.</p> <p>8 Q. Who do you remember?</p> <p>9 A. I remember Skipper Wallace. I remember there</p> <p>10 were individual citizens that testified both for and</p> <p>11 against. I remember NAACP, LULAC, MALDEF.</p> <p>12 Q. I may have an exhibit that can help you.</p> <p>13 A. Okay.</p> <p>14 Q. Do you remember how many times the select</p> <p>15 committee held hearings at which testimony was received?</p> <p>16 A. If I recall correctly, I think it was one</p> <p>17 hearing.</p> <p>18 (Exhibit 645 marked.)</p> <p>19 Q. Okay. This will be Exhibit 645, please. Do</p> <p>20 you know what this?</p> <p>21 A. This is a printout of the witness list for</p> <p>22 Senate Bill 14.</p> <p>23 Q. Does this help refresh your memory -- Is this</p> <p>24 for the one hearing that you said the select committee</p> <p>25 held on SB14?</p>	<p style="text-align: center;">147</p> <p>1 Q. What did he say during those meetings?</p> <p>2 MR. SWEETEN: He's not a legislator or</p> <p>3 legislative staff member of a state agency or member of</p> <p>4 the TLC, right?</p> <p>5 THE WITNESS: Right.</p> <p>6 MR. SWEETEN: Okay. So you can answer the</p> <p>7 question.</p> <p>8 A. He expressed support for the legislation. In</p> <p>9 2009, he was complaining that Todd Smith was taking too</p> <p>10 long to get the bill out of committee. He complained to</p> <p>11 me a lot about that. I mean, generally supportive at</p> <p>12 that time of Senate Bill 362.</p> <p>13 Q. In 2009 did you get complaints from other</p> <p>14 constituents or members of the public that Todd Smith</p> <p>15 was taking too long to get the bill out of committee?</p> <p>16 A. Yes.</p> <p>17 Q. About how many of those communications did you</p> <p>18 get from constituents or members of the public?</p> <p>19 A. I don't recall how many.</p> <p>20 Q. More than 10?</p> <p>21 A. From constituents?</p> <p>22 Q. Or from anyone outside the legislature really.</p> <p>23 A. More than 10, yes.</p> <p>24 Q. More than 20?</p> <p>25 A. I don't recall.</p>
<p style="text-align: center;">146</p> <p>1 A. Yes.</p> <p>2 Q. Does this list refresh your memory about who</p> <p>3 testified?</p> <p>4 A. Yes.</p> <p>5 Q. Now, you said Skipper Wallace testified. Who</p> <p>6 is he?</p> <p>7 A. He is I'm -- not sure his title, but he's the</p> <p>8 government's relations person for -- I think it's the</p> <p>9 Republican County Chairs Association, if I have that</p> <p>10 right.</p> <p>11 Q. What did he testify about?</p> <p>12 A. He testified in support of the legislation.</p> <p>13 Q. What were his arguments in support of the</p> <p>14 legislation?</p> <p>15 A. I don't recall specifically.</p> <p>16 Q. Do you remember generally what his arguments</p> <p>17 were?</p> <p>18 A. Generally, he just -- he supported the</p> <p>19 legislation.</p> <p>20 Q. Have you ever spoken or met with him?</p> <p>21 A. Yes.</p> <p>22 Q. When was that?</p> <p>23 A. In the 2009 session. I recall a 2009 session.</p> <p>24 I don't recall whether or not I met with him in the 2011</p> <p>25 session.</p>	<p style="text-align: center;">148</p> <p>1 Q. Did you have meetings with other members of the</p> <p>2 public about SB362 in 2009?</p> <p>3 A. Yes.</p> <p>4 Q. What were the content of those meetings?</p> <p>5 A. Different people or groups would either support</p> <p>6 or not support the legislation and explain the reasons</p> <p>7 why.</p> <p>8 Q. What were the reasons given for their support</p> <p>9 of the bill?</p> <p>10 A. To deter voter fraud, to ensure election</p> <p>11 integrity, to make sure that the person voting is who</p> <p>12 they say they are.</p> <p>13 Q. Did anyone raise the issue of noncitizen voting</p> <p>14 with you during those meetings?</p> <p>15 MR. SWEETEN: We're talking about</p> <p>16 constituent meetings?</p> <p>17 MS. BERKOWER: Meetings, yeah.</p> <p>18 A. I believe the topic came up, but I don't</p> <p>19 remember exactly who said it.</p> <p>20 Q. Did you meet with who opposed the bill? And</p> <p>21 I'll think now we jump back in time a little bit to</p> <p>22 2009.</p> <p>23 A. Who opposed the bill? Gosh, I had so many</p> <p>24 meetings in that session. I think there's a group</p> <p>25 that's called -- they go by the acronym OWLS, and</p>

<p style="text-align: center;">149</p> <p>1 they -- they call themselves objective election</p> <p>2 watchers, I think. Actually, wait. They supported the</p> <p>3 bill. You are looking for who I met that opposed it.</p> <p>4 If I recall correctly, I think I met with</p> <p>5 the representatives from NAACP, LULAC, MALDEF, League of</p> <p>6 Women Voters, a representative from the Texas Democratic</p> <p>7 Party, a group of college kids, but I can't recall what</p> <p>8 school they were with, that I know I met with. I</p> <p>9 remember meeting with the Catholic Diocese. I think</p> <p>10 that's the group, and voter ID was one of the topics</p> <p>11 that they talked about and didn't support it. That's</p> <p>12 tall I can think of.</p> <p>13 Q. How did people get meetings with you about</p> <p>14 different legislation?</p> <p>15 A. If they have my direct line, they just call me</p> <p>16 direct. Otherwise, they'll call the main line in our</p> <p>17 policy office and they'll transfer them directly to us</p> <p>18 so we can set up an appointment.</p> <p>19 Q. Do you generally meet in person or on the phone</p> <p>20 for these types of meetings?</p> <p>21 A. Generally in person.</p> <p>22 Q. Do you ever say no to a meeting?</p> <p>23 A. I've never said no.</p> <p>24 Q. So turning back to 2011, you said you met with</p> <p>25 Skipper Wallace in 2011. What was the content of your</p>	<p style="text-align: center;">151</p> <p>1 public benefits?</p> <p>2 MR. SWEETEN: You are asking her as she's</p> <p>3 sitting here? I mean to some extent you could be asking</p> <p>4 her to reveal her thoughts and mental impressions about</p> <p>5 bills, so if you can separate -- if these questions</p> <p>6 would require you to do that, do not reveal that</p> <p>7 information. To the extent that you can answer as</p> <p>8 you're sitting here and if not impact those, then you</p> <p>9 can answer. Does that make sense?</p> <p>10 A. M-hm.</p> <p>11 Q. Okay.</p> <p>12 A. I've never really thought about it. Well, the</p> <p>13 right to government benefits --</p> <p>14 Q. I'll withdraw that particular question. Do you</p> <p>15 have -- Do you have a fundamental right to vote?</p> <p>16 MR. SWEETEN: Same objection.</p> <p>17 A. Yes.</p> <p>18 Q. Do you have a fundamental right to rent a</p> <p>19 video?</p> <p>20 MR. SWEETEN: Same instruction.</p> <p>21 A. No.</p> <p>22 Q. Do you -- Do you have a fundamental right to</p> <p>23 pick up prescriptions at the pharmacy?</p> <p>24 A. No.</p> <p>25 MR. SWEETEN: Same instruction.</p>
<p style="text-align: center;">150</p> <p>1 meeting in 2011?</p> <p>2 A. I can't remember whether or not I met with him</p> <p>3 in 2011.</p> <p>4 Q. Okay. Well, you said you did remember him</p> <p>5 testifying though at the select committee hearing?</p> <p>6 A. Yes.</p> <p>7 Q. What did he say during that hearing?</p> <p>8 A. I can't recall specifics. I know he supported</p> <p>9 the legislation. Was very adamant about supporting the</p> <p>10 legislation. If I recall correctly, I think he talked</p> <p>11 about other activities for which one needs an ID,</p> <p>12 boarding a plane, getting government benefits. That's</p> <p>13 pretty much all I can recall.</p> <p>14 Q. Have you heard that argument generally in the</p> <p>15 context of voter identification?</p> <p>16 MR. SWEETEN: Don't answer the question.</p> <p>17 Q. I guess I could say as part of the public -- as</p> <p>18 part of the public record, have you heard people advance</p> <p>19 that argument that you need identification to do things</p> <p>20 like board a plane or obtain government benefits?</p> <p>21 A. Yes. It's come up in testimony.</p> <p>22 Q. Do you have a fundamental right to board a</p> <p>23 plane?</p> <p>24 A. No.</p> <p>25 Q. Do you have a fundamental right to obtain</p>	<p style="text-align: center;">152</p> <p>1 Q. Okay. Turning back to this list of people who</p> <p>2 testified at the March 1st, 2011 hearing, do you</p> <p>3 remember with any specificity what any of these other</p> <p>4 witnesses testified to rather than just for or against</p> <p>5 as they're listed on the page?</p> <p>6 A. If I recall correctly, I remember testimony, I</p> <p>7 think, by whoever was representing the King Street</p> <p>8 Patriots, that they had witnessed someone voting twice</p> <p>9 or they thought the person looked -- the same person</p> <p>10 voted twice. They, I think, had a distinctive feature.</p> <p>11 Q. Is that the same person that you mentioned</p> <p>12 earlier with the tattoos who came in and voted twice or</p> <p>13 is that a different --</p> <p>14 A. That's a different one.</p> <p>15 Q. It was a different person?</p> <p>16 A. M-hm.</p> <p>17 Q. So it was not just a tattoo that they knew that</p> <p>18 the person had voted twice?</p> <p>19 A. I want to say that it was strange hair color,</p> <p>20 purple or green or something, that caught their eye.</p> <p>21 Q. Do you remember if that was Ms. Engelbrecht who</p> <p>22 testified for this -- the King Street Patriots,</p> <p>23 Catherine Engelbrecht?</p> <p>24 A. I don't recall her name.</p> <p>25 Q. Have you met her before?</p>

<p style="text-align: center;">161</p> <p>1 A. Yes.</p> <p>2 Q. Okay. To your knowledge did the -- did the</p> <p>3 Secretary of State's Office ever provide any information</p> <p>4 to the legislature to determine how many of those</p> <p>5 690,000 voters were minority voters?</p> <p>6 MR. SWEETEN: You're asking about was an</p> <p>7 analysis provided to the legislature from Ann McGeehan?</p> <p>8 Is that what you said?</p> <p>9 MS. BERKOWER: From the Secretary of</p> <p>10 State's Office.</p> <p>11 MR. SWEETEN: I'm going to object. It's</p> <p>12 been asked three other times and don't reveal any</p> <p>13 substance of the communication, if any, but you can</p> <p>14 testify the last time though -- you can testify that an</p> <p>15 analysis was provided.</p> <p>16 A. I don't know.</p> <p>17 Q. Okay. Are you aware of any existing document</p> <p>18 or report in the public record that identifies how many</p> <p>19 Texas voters are in possession of a concealed handgun</p> <p>20 license?</p> <p>21 A. I don't recall.</p> <p>22 Q. Are you aware of any existing document or</p> <p>23 report in the public record that identifies how many</p> <p>24 minority voters are in possession of a concealed handgun</p> <p>25 license?</p>	<p style="text-align: center;">163</p> <p>1 these questions in part because it would reflect</p> <p>2 underlying facts that may have been provided rather</p> <p>3 than --</p> <p>4 MR. SWEETEN: I think your first line of</p> <p>5 questions before you went into do you know may have done</p> <p>6 that, and this section is now -- could invade the</p> <p>7 legislative privilege. I ask you to be mindful of the</p> <p>8 privilege.</p> <p>9 Q. (BY MS. BERKOWER) Okay. Do you know how many</p> <p>10 Texas voters are in possession of a passport?</p> <p>11 MR. SWEETEN: Same instruction.</p> <p>12 A. I don't.</p> <p>13 Q. Do you know how many minorities voters are in</p> <p>14 possession of a passport?</p> <p>15 MR. SWEETEN: The same instruction. Don't</p> <p>16 reveal matters of a legislative privilege.</p> <p>17 A. I don't know.</p> <p>18 Q. Do you know how many Texas voters are in</p> <p>19 possession of a citizenship certificate with a</p> <p>20 photograph?</p> <p>21 MR. SWEETEN: Same instruction on</p> <p>22 legislative privilege.</p> <p>23 A. I don't know.</p> <p>24 Q. Do you know -- I'm not -- Never mind. Getting</p> <p>25 back to the list of witnesses who testified on the -- in</p>
<p style="text-align: center;">162</p> <p>1 A. I don't recall.</p> <p>2 Q. Are you aware of any existing document or</p> <p>3 report that identified -- in the public record that</p> <p>4 identifies how many Texas voters are in possession of a</p> <p>5 US military card?</p> <p>6 A. I don't recall.</p> <p>7 Q. Are you aware of any existing document or</p> <p>8 report that identifies how many Texas -- Sorry. I'm</p> <p>9 going to start that question over. Sorry.</p> <p>10 Do you know how many Texas voters are in</p> <p>11 possession of a US military card?</p> <p>12 A. I don't.</p> <p>13 Q. Do you know how many minority voters are in</p> <p>14 possession of a US military card?</p> <p>15 A. I don't.</p> <p>16 Q. Do you know how many --</p> <p>17 MR. SWEETEN: I want to make sure the</p> <p>18 instruction's clear. I don't want you to reveal any</p> <p>19 matters that would be related to your mental</p> <p>20 impressions, thought processes, investigations regarding</p> <p>21 the bill as you're answering these, so don't answer if</p> <p>22 you'd be revealing any legislative privilege that you</p> <p>23 don't know, but I want to make sure that the</p> <p>24 legislative privilege instruction is clear.</p> <p>25 MS. BERKOWER: To be clear, I'm asking</p>	<p style="text-align: center;">164</p> <p>1 the March 1st, 2011 hearing, were there any other</p> <p>2 witnesses whose testimony you remember with any</p> <p>3 specificity that we haven't already discussed?</p> <p>4 A. No one else comes to mind.</p> <p>5 Q. In the time that the legislature has considered</p> <p>6 voter fraud, do you recall any evidence entered into the</p> <p>7 public record concerning mail-in ballot fraud?</p> <p>8 A. I know the topic has been discussed in</p> <p>9 hearings, but I don't know particular specifics.</p> <p>10 Q. Do you remember anybody testifying that</p> <p>11 mail-in -- testifying as part of the public record that</p> <p>12 mail-in ballot fraud is more common than in-person</p> <p>13 ballot fraud?</p> <p>14 A. Yes.</p> <p>15 Q. Does SB14 address mail-in ballot fraud?</p> <p>16 A. To my recollection it did not.</p> <p>17 Q. Did SB362 address mail-in ballot fraud?</p> <p>18 MR. SWEETEN: Don't provide your thoughts,</p> <p>19 mental impressions or analysis about legislative</p> <p>20 matters, okay? That means your mental impressions,</p> <p>21 opinions about legislation, what it would or wouldn't</p> <p>22 address would be within the legislative privilege.</p> <p>23 MS. BERKOWER: Maybe I can rephrase the</p> <p>24 question. I think we were looking at SB362 -- a copy of</p> <p>25 it earlier today, so you have the text of that bill.</p>

165

1 Based on the text of the exhibit that you had, did that
2 bill address mail-in voter fraud? Is that acceptable,
3 Patrick?

4 MR. SWEETEN: From the text that's in
5 front of her, I'll let her look and see if it
6 addresses --

7 A. We're on 362 now?

8 Q. 362.

9 A. From the text in front of me, I do not see the
10 language addressing mail-in ballot fraud.

11 MS. BERKOWER: And I have this exhibit
12 which has been previously marked as Exhibit 5 in another
13 deposition. Can have we this marked as 5 here, please?

14 MR. SWEETEN: I thought we already gave
15 her 14.

16 Q. (BY MS. BERKOWER) I gave her as filed. I think
17 if you turn to the last page, you might have a sense of
18 what this is. Do you know what this is?

19 A. This looks like the final version of Senate
20 Bill 14 signed by the governor.

21 Q. If you -- If you can take a minute to review
22 this. If you could tell me, does the text of that bill
23 address mail-in ballot fraud?

24 A. The text in front of me, I don't see provisions
25 related to mail-in ballots.

166

1 Q. Do you remember if there was any discussion on
2 the public record at the time that these bills -- and
3 I'm referring to SB14 and 362 -- were being debated by
4 the legislation that the bill should address mail-in
5 ballot fraud?

6 MR. SWEETEN: You can testify as to
7 matters of the public record in answering the question.

8 A. I believe that topic was discussed.

9 Q. Who raised that issue, if you remember?

10 A. I don't recall.

11 Q. What were the arguments that that person made?

12 MR. SWEETEN: You can refer to the record,
13 but don't reveal legislative privilege.

14 A. I'd have to look back at the record.

15 Q. Do you remember if that argument was to the
16 effect of mail-in ballot fraud is a bigger problem than
17 in-person ballot fraud, so legislation addressing voter
18 fraud should address mail-in ballot fraud just as a
19 matter of what you remember from testimony on the public
20 record?

21 MR. SWEETEN: Yeah. Don't reveal your
22 thought processes as you are assessing the public
23 record. So if that was specifically said as phrased,
24 you can answer, if it was on the public record. If it's
25 requiring you to reveal matters that are subject to the

167

1 privilege, don't do that.

2 A. Can you repeat it? Sorry.

3 Q. Sure. I was asking if -- You said you
4 remembered there was testimony about mail-in ballot
5 fraud and that the bill, I think you said, should
6 address mail-in ballot fraud. Is that an accurate
7 summary of your testimony?

8 A. Yes.

9 Q. With regard to the person who made those
10 arguments on the public record, did they ever argue that
11 the bill should address mail-in ballot fraud because
12 it's a bigger problem than in-person ballot fraud?

13 A. I don't know specifically if that statement was
14 said.

15 Q. Was an argument to that effect made on the
16 public record?

17 A. Yes.

18 Q. But you don't -- you don't remember who made
19 it?

20 A. I don't.

21 Q. Did you receive any constituent correspondence
22 that made that argument against the bill?

23 A. I don't recall.

24 Q. Turning back just for a minute to the interim
25 charge -- the interim charge committee report -- I'm

168

1 sorry. I know you have a lots of documents in front of
2 you at this point. Can I find it?

3 A. Yes.

4 Q. In turning to Page 26 of the document, which
5 listed the interim charge given to the committee, was
6 the committee charge limited only to an investigation of
7 in-person voter fraud?

8 MR. SWEETEN: You can answer based on
9 what's on the text of the report.

10 A. The charges says, "Examine the prevalence of
11 fraud in Texas elections."

12 Q. Does that text specifically specify in-person
13 fraud and not mail-in fraud?

14 A. As I read it, it does not specify any
15 particular type of fraud.

16 Q. Right. And it doesn't exclude any type of
17 fraud?

18 A. Right.

19 Q. Turning to the last page, I think, for the
20 Recommendation section, I don't remember which page it
21 is exactly. It's towards the end. And based on that
22 text, do you see any recommendation to the legislature
23 to pass a bill that addresses mail-in ballot fraud?

24 MR. SWEETEN: I'm reading about recusal on
25 my recommendation. Judge's recusal.

169

1 MS. BERKOWER: Okay.

2 A. Here we go.

3 Q. Sorry.

4 A. I found it. Yeah. I started reading that too.

5 MS. BERKOWER: I'm sorry. I don't where

6 my copy went, so I know it's towards the end.

7 MR. PHILLIPS: Do you need this copy back?

8 Q. I only have this one question about it. It's

9 okay.

10 A. Can you repeat the question? I'm sorry.

11 Q. Yeah. Based on the text of this

12 recommendation, do you see anything in there that

13 recommends that the legislature pass legislation

14 concerning mail-in ballot fraud?

15 A. Based on this text, I do not.

16 Q. Okay. Were you present for the House floor
17 debates on SB14?

18 A. Yes.

19 Q. Were you present when amendments were offered
20 and voted on for the bill?

21 A. Yes.

22 Q. Do you remember that the debate --

23 A. The debate on the bill, yes.

24 Q. So do you remember that amendments were opposed
25 and debated on and there were a number of amendments?

170

1 A. Yes.

2 Q. Okay. So this exhibit -- actually, only have
3 one copy of it, but I'm happy to give it to you because
4 I think I know what we're going to be talking about, and
5 it was previously marked. Did you make a copy? It was
6 previously marked in a different deposition, but maybe
7 as Rodriguez Exhibit 36. So I guess we can mark that
8 again here.

9 So I have Exhibit 36, and, I'm sorry, I
10 only have the one copy. If you don't mind sharing,
11 Patrick, with her. Do you know what this is?

12 A. It looks like a transcript of the floor debate
13 on Senate Bill 14.

14 Q. What's the date on that?

15 A. March 23rd, 2011.

16 Q. Can you turn to Page 38, please? Does Speaker
17 Straus speak on the record on Page 38?

18 A. Yes.

19 Q. Can you review what he said? Let me know when
20 you are done. Have you read it?

21 A. Yes.

22 Q. Do you see that he made statements concerning
23 the fact that "many minority groups protected under the
24 Voting Rights Act would like to show photo ID to vote"?

25 A. Yes.

171

1 Q. And he said he had attended a roundtable at
2 which groups raised -- members of minority groups raised
3 that point with him?

4 A. Yes.

5 Q. Do you know what roundtable he was referring
6 to?

7 A. I do not.

8 Q. Have you ever attended a roundtable event with
9 him?

10 A. No.

11 Q. Did you ever hear any reports about that
12 roundtable event?

13 A. That I can recall.

14 Q. Turning to Page 89 of the transcript, please.

15 Do you see the speaker spoke on the record on that as
16 recorded in the transcript on Page 89?

17 A. Yes.

18 Q. Does it start on the previous page?

19 A. Yes.

20 Q. Can you review that -- that part of the record?

21 A. Yes.

22 Q. Okay. Was this exchange with Speaker Straus
23 and was he speaking with Representative Bonnen on the
24 record there?

25 MR. SWEETEN: You are asking on Pages 88

172

1 and 89?

2 A. Yes.

3 Q. Yes.

4 A. Yes.

5 Q. Were they discussing an amendment that
6 Representative Bonnen had proposed to SB14?

7 MR. SWEETEN: Don't interpret the words.

8 Q. Just based on what's in the transcript?

9 A. Yes.

10 Q. Was the amendment to eliminate the over 70
11 exemption that we discussed in the certification of SB14
12 as filed in the Senate?

13 MR. SWEETEN: Are you asking was the
14 subject matter of the discussion the over 70 amendment?

15 MS. BERKOWER: Yes.

16 MR. SWEETEN: Okay.

17 A. I don't see any discussion about what the
18 amendment is. I just see that.

19 Q. Well, I think you could go back a page or two
20 and that will help. You can review the few pages before
21 that.

22 A. Okay. Okay. Yes, now I see it.

23 Q. So were they discussing an amendment to
24 eliminate the over 70 exemption?

25 A. According to this document, yes.

<p style="text-align: center;">173</p> <p>1 Q. Okay. Did Speaker Straus state that he was not</p> <p>2 going to support the amendment?</p> <p>3 MR. SWEETEN: Don't reveal matters of</p> <p>4 privilege.</p> <p>5 Q. Just as far as that transcript goes.</p> <p>6 A. Can you repeat the question?</p> <p>7 Q. Did Speaker Straus say he would not support the</p> <p>8 amendment?</p> <p>9 A. According to this, yes.</p> <p>10 Q. Did he give a reason as to why he was not</p> <p>11 supporting the amendment as reflected in that</p> <p>12 transcript?</p> <p>13 A. Yes.</p> <p>14 Q. Was the reason that Texas already allows people</p> <p>15 over 65 to get mail-in ballots and there's no signatures</p> <p>16 required -- sorry -- no photo identification for those</p> <p>17 ballots?</p> <p>18 MR. SWEETEN: Don't provide testimony on</p> <p>19 his reason. You can testify about what's on the text of</p> <p>20 the page.</p> <p>21 A. According to the text, yes.</p> <p>22 Q. Did he also say that voter -- the voter</p> <p>23 identification bill should be striking a balance between</p> <p>24 securing each vote but also securing access to the</p> <p>25 franchise?</p>	<p style="text-align: center;">175</p> <p>1 claimed -- that they testified would prevent the</p> <p>2 disenfranchisement of minorities?</p> <p>3 MR. SWEETEN: Objection. Calls for</p> <p>4 legislative privilege. Instruct not to answer.</p> <p>5 Q. Okay. Maybe I can rephrase it. Did any</p> <p>6 legislator testify on the public record that an</p> <p>7 amendment he proposed would prevent the</p> <p>8 disenfranchisement of minorities?</p> <p>9 MR. SWEETEN: You can testify as rephrased</p> <p>10 as to matters on the public record.</p> <p>11 A. That specific statement on that topic, yes.</p> <p>12 Q. Do you remember which amendments that testimony</p> <p>13 referred to?</p> <p>14 A. I don't recall the particularly which</p> <p>15 amendments.</p> <p>16 Q. Do you remember if any of those amendments</p> <p>17 ultimately were included in the final bill?</p> <p>18 A. I don't.</p> <p>19 MR. SWEETEN: Objection. Foundation to</p> <p>20 the question.</p> <p>21 Q. What was the general legislative purpose of</p> <p>22 SB14?</p> <p>23 A. To deter voter fraud.</p> <p>24 Q. Was any of -- was there any -- Was part of the</p> <p>25 general legislative purpose of SB14 to prevent</p>
<p style="text-align: center;">174</p> <p>1 A. According to the text, yes.</p> <p>2 Q. Do you know if there were any other amendments</p> <p>3 to SB14 that Speaker Straus publicly said on the record</p> <p>4 he would not support?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you know if there were any other instances</p> <p>7 on the public record where Speaker Straus expressed a</p> <p>8 concern to strike a balance between securing each vote,</p> <p>9 but also securing access to the franchise?</p> <p>10 MR. SWEETEN: You can testify as to the</p> <p>11 matter of public record. Don't reveal matters of</p> <p>12 privilege.</p> <p>13 A. I don't recall.</p> <p>14 Q. During the legislative debates on SB14, did --</p> <p>15 were there concerns raised in the public records that</p> <p>16 the bill would disenfranchise minority voters?</p> <p>17 MR. SWEETEN: You can testify if something</p> <p>18 was expressed on the public record. Don't interpret</p> <p>19 what was said on the record to the extent that would</p> <p>20 reveal your mental impressions and opinions. You can</p> <p>21 answer.</p> <p>22 A. On the public record, yes.</p> <p>23 Q. Did any legislators take action on the public</p> <p>24 record to prevent the disenfranchisement of minorities</p> <p>25 as they viewed it by proposing amendments that they</p>	<p style="text-align: center;">176</p> <p>1 noncitizens from voting?</p> <p>2 A. No.</p> <p>3 Q. After SB14 was enacted, did you have any</p> <p>4 conversations about the bill with other staff members</p> <p>5 about the bill for Speaker Straus? Sorry.</p> <p>6 A. Did I have conversations with other staffers?</p> <p>7 Q. Yes.</p> <p>8 MR. SWEETEN: She's saying after passage.</p> <p>9 A. After passage?</p> <p>10 Q. Yeah.</p> <p>11 A. I don't recall any specific conversations.</p> <p>12 Q. Did you have any communications with Ashley</p> <p>13 Kaden or Allison Winney after the bill's passage or in</p> <p>14 passage? Yeah.</p> <p>15 A. Yes.</p> <p>16 Q. What were those communications?</p> <p>17 MR. SWEETEN: The substance? Is that what</p> <p>18 you are asking or in what form? I'm not sure what</p> <p>19 you're asking.</p> <p>20 Q. Well, let's start with what types of</p> <p>21 communications were those.</p> <p>22 A. Do you mean phone, email, person to person?</p> <p>23 Q. Yeah.</p> <p>24 A. Email and person to person.</p> <p>25 Q. What was the subject matter of those</p>

<p style="text-align: center;">197</p> <p>1 A. Can you repeat it again?</p> <p>2 Q. (BY MS. BERKOWER) Okay. Do you know if</p> <p>3 current law -- under current law procedures exist to</p> <p>4 verify a person's identity at the polls?</p> <p>5 A. I don't know.</p> <p>6 Q. At any time since the passage of SB14, have you</p> <p>7 come to believe it was based with any discriminatory</p> <p>8 purpose?</p> <p>9 A. Repeat it, please. Sorry.</p> <p>10 Q. At any time since the passage of SB14, have you</p> <p>11 coming to believe it was passed with any discriminatory</p> <p>12 purpose?</p> <p>13 A. No.</p> <p>14 Q. At any time since the passage of SB14, have you</p> <p>15 had come to believe that SB14 will have a retrogressive</p> <p>16 effect on minority voters?</p> <p>17 MR. SWEETEN: You can answer.</p> <p>18 A. No.</p> <p>19 Q. If you are called to trial, will you testify</p> <p>20 that SB14 has no discriminatory purpose?</p> <p>21 A. Yes.</p> <p>22 Q. If you are called to trial, will you testify</p> <p>23 that SB14 has no discriminatory effect?</p> <p>24 MR. SWEETEN: You can answer if you know</p> <p>25 what you would be called to testify about. But when you</p>	<p style="text-align: center;">199</p> <p>1 share?</p> <p>2 A. No.</p> <p>3 MS. BERKOWER: So I'm going pass you now</p> <p>4 I'm done with my questions. I'm going to pass you now</p> <p>5 to Lindsey who has a few questions for you.</p> <p style="text-align: center;">EXAMINATION</p> <p>7 BY MS. STELCEN</p> <p>8 Q. Don't worry. This will be very brief. First,</p> <p>9 I believe you stated earlier that Steven Schar was the</p> <p>10 clerk for Representative Smith; is that correct?</p> <p>11 A. He was.</p> <p>12 Q. He was -- In '09, he was the clerk for the</p> <p>13 elections committee?</p> <p>14 A. Yes.</p> <p>15 Q. And in 2011, he was the clerk for the special</p> <p>16 committee on voter fraud?</p> <p>17 A. Yes.</p> <p>18 Q. And I think you said earlier that he was</p> <p>19 responsible for putting together binders for the</p> <p>20 committee?</p> <p>21 A. Yes.</p> <p>22 Q. Is that a practice that's done for every</p> <p>23 committee, binders are put together?</p> <p>24 A. Yes.</p> <p>25 Q. And what typically is included in a binder for</p>
<p style="text-align: center;">198</p> <p>1 are saying would she be -- In answering this last</p> <p>2 question, if it would require you to reveal your</p> <p>3 thoughts, mental processes related to the bill, then</p> <p>4 doesn't answer that last question, but if it --</p> <p>5 A. Can you ask it again?</p> <p>6 Q. If you are called to trial, will you testify</p> <p>7 that SB14 has no discriminatory effect?</p> <p>8 A. Yes.</p> <p>9 Q. What's the basis for that?</p> <p>10 MR. SWEETEN: In answering the question,</p> <p>11 if the basis of that would reveal your thoughts, mental</p> <p>12 impressions about the legislation, then you do not</p> <p>13 answer that question.</p> <p>14 A. I'm going to choose not to answer.</p> <p>15 Q. Okay. We're at the end now. Do you want to</p> <p>16 change --</p> <p>17 MR. SWEETEN: Okay. Go ahead. I thought</p> <p>18 it was the end.</p> <p>19 Q. Well, I was going to say, do you want to change</p> <p>20 any of the answers you provided today?</p> <p>21 A. No.</p> <p>22 Q. Is there any information you recall now that</p> <p>23 you did not recall earlier today?</p> <p>24 A. None that comes to mind.</p> <p>25 Q. Is there anything additional that you want to</p>	<p style="text-align: center;">200</p> <p>1 the committee?</p> <p>2 A. The legislation, the bill analysis, the fiscal</p> <p>3 note and any written testimony or written exhibits that</p> <p>4 witnesses have distributed to the committee already.</p> <p>5 Q. Okay. And that's all -- that's all witness</p> <p>6 statements that are produced prior to the committee. So</p> <p>7 is it updated throughout, I guess, is my question? Is</p> <p>8 the binder updated throughout?</p> <p>9 A. Yes. Normally witnesses will come in and they</p> <p>10 have copies that's distributed to members.</p> <p>11 Q. That's my only question on that. How long has</p> <p>12 Speaker Straus been a speaker?</p> <p>13 A. Since January 2009.</p> <p>14 Q. And how often does he need to be reelected as</p> <p>15 speaker?</p> <p>16 A. To the speakership, every session.</p> <p>17 Q. When's the last time that he had to run for the</p> <p>18 speakership?</p> <p>19 A. Last session.</p> <p>20 Q. What month is that typically that he runs?</p> <p>21 A. It's January.</p> <p>22 Q. And does Speaker Straus publicly campaign for</p> <p>23 the speakership?</p> <p>24 A. When you say publicly --</p> <p>25 Q. Does he make public statements about why he</p>